

Panaji, 1st January, 2004 (Pausa 11, 1925)

SERIES II No. 40

OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT

No. 2

GOVERNMENT OF GOA

Department of Labour

Order

No. 28/7/2001-LAB

The following Award dated 27-6-2002 in reference No. IT/51/89 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.
Sanjiv M. Gadkar, Under Secretary (Labour).
 Panaji, 9th July, 2002.

IN THE INDUSTRIAL TRIBUNAL
 GOVERNMENT OF GOA
 AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/51/89

Workmen rep. by
 Goa Trade & Commercial Workers Union
 Panaji Goa. ... Workmen/Party I

V/s

M/s. Antonio Pereira & Company,
 Sawarfond,
 Cortalim,
 Sancoale-Goa. ... Employer/Party II
 Workmen/Party I - Represented by Adv. Shri R. Mangueshkar.

Employer/Party II - Represented by Adv. Shri P. J. Kamat.

Panaji, dated: 27-6-2002.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 9th August, 1989 bearing No. 28/37/89-LAB referred the following dispute for adjudication of this Tribunal.

"Whether the following demands raised by the Goa Trade and Commercial Workers' Union before the management of M/s. Antonio Pereira and Company, Sancoale, are legal and justified?

Demand No. I (a): Pay Scales: It is demanded that the following pay scales be made applicable to the workmen employed at M/s. Antonio Pereira and Company as per their respective designations.

Grade	Designation	Pay Scales
I	Welder, Cutter Fitter, Supervisor	850-30-1000-40-1200-50-1650 5 5 7
II	Helper	725-25-850-30-1000-40-1200 5 5 5

(b) **Flat Rise:** It is demanded that each workman be given a flat rise of Rs. 250/- per month on the basic salary as on 1-12-1988. After adding this flat rise of Rs. 250/- as per the respective grade each workman's basic be fitted in the respective scale of pay.

Demand No. II: Fixed Dearness Allowance (FDA): It is demanded that each workman be paid fixed dearness allowance of Rs. 200/- per month.

Demand No. III: Variable Dearness Allowance: It is demanded that each workman be paid a Variable Dearness allowance @ Rs. 1.50 per point rise over the above 600 points (1960=100) to be revised every quarter.

Demand No. IV: House Rent Allowance: It is demanded that each workman be paid a House Rent Allowance @ 10% of the basic salary each month.

Demand No. V: Uniforms and Washing Allowance: It is demanded that each workman be issued two pairs of uniforms and paid Rs. 30/- per month towards washing allowance.

Demand No. VI: Leave Facilities: It is demanded that each workman be given the following leave facilities:

Privilege Leave	...	30 days per annum
Casual Leave	...	10 days per annum
Sick Leave	...	10 days per annum
Holidays	...	12 days per annum

If not, to what relief the workmen are entitled?"

2. On receipt of the reference a case was registered under No. IT/51/89 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workmen-Party-I (for short, "Union") filed its statement of claim at Exb. 2. The facts of the case in brief as pleaded by the union are that by letter dated 26-12-88 the Union submitted charter of demands to the Employer/Party-II (for short, "employer") containing demands mentioned in the schedule of reference. That the employer is a Contractor and undertakes contracts for repairs and maintenance of ships and barges. That the employer employs about 40 workers out of which 13 workers who are the permanent workers are their members i.e. of Goa Trade & Commercial Workers Union. That the employer mainly repairs the barges of M/s. Chowgule & Company who are the marine owners having a fleet of barges and the employer repairs about 12 barges per year of the said company. That the employer earns about Rs. 1,20,000/- from the repairs of the said barges. That the workshop of the employer works in three shifts and the employer employs workers in the category of fitters, cutters, welders, supervisors etc. That prior to submitting charter of demands the employer used to pay to the workers wages of Rs. 22/- to Rs. 26/- per day though they had put in 5 to 6 years of service and they were not paid FDA, VDA, HRA etc., and were also not given uniforms, washing allowance and other facilities like leave, holidays etc., That the cost of living in Goa is very high and the workers are not able to maintain themselves within the paltry wages of Rs. 22/- or Rs. 26/- per day. That the workers are staying in the rental houses which are situated at distant places as a result of which they have to incur heavy expenses and therefore the employer ought to have paid HRA to the workers. That the workers are paid on daily wages and they are not properly graded and designated and therefore they are entitled to proper gradation and pay scale. That the workers are not able to maintain themselves due to the high cost of living and therefore they ought to be paid FDA & VDA as demanded in the charter of demands and also they ought

to be given facilities like leave, paid holidays etc., as demanded. The union therefore prayed that the demands be allowed w.e.f. 26-11-98 as they are legal and justified.

3. The employer filed written statement at Exb. 3 denying the claim of the union. The employer stated that the reference is not maintainable because none of the workers working with them are the members of the union i.e. Goa Trade & Commercial Workers Union and the union has failed to show as to on whose behalf the demands have been raised. The employer stated that it is a Partnership Firm having similar workshop at Rasaim, Goa and is doing the work of repairs and maintaining of ships and barges mainly of Main Land Docks Pvt. Ltd. The employer stated that its work is mainly seasonal and certain workers are employed for seasonal work. The employer stated that its income is only from the work of repairs and maintenance as and when the job is received from the Main Land Docks Pvt. Ltd., and it has no financial capacity to concede to the demands of the union. The employer stated that few temporary workers joined the union in December, 1988 and without knowing the financial capacity of the employer, the union submitted charter of demands asking for revision in service condition which are irrational and unreasonable and since the demands were beyond the capacity of the employer, settlement could not be arrived at. The employer stated that since there was no work the employer retrenched the services of temporary workers and that presently no workman is working with the employer on whose behalf the purported demands have been raised by the union and therefore the reference does not survive. The employer stated that they were getting the work mainly from Main Land Docks Pvt. Ltd., and for the past several months they could not get work from the said Firm because of strike/lockout in Chowgule & Company Ltd. The employer stated that they pay to the workers, cutters, fitters the wages between Rs. 25/- to Rs. 40/- per day and the helpers are paid Rs. 15/- to Rs. 20/- per day and further that overtime is given double the rate and also gives Food Allowance of Rs. 6/- per day and provides uniform. The employer denied that they employed about 40 workers or that 13 workers are the members of the union or that they are the permanent workers. The employer denied that they repair barges of Chowgule & Company or that the value of the repair is about 1,20,000/-. The employer denied that the workshop works in 3 shifts and stated that depending upon the workload sometimes the workshop works in 3 shifts. The employer denied that the workers are not given uniform or washing allowance or proper leave and other facilities. The employer denied that pathetic wages are being given to the workers or that they are not given facilities and stated that considering the type of service given by them and their financial capacity the wages paid to the workers are high and reasonable and no case exists for the revision as demanded by the union. The employer stated that the union has not made out any case for grant of FDA, VDA, HRA etc. The employer stated that the services of 13 workmen were retrenched on 30-5-89 because no work could be provided to them and that subsequently when

the work was received they were individually called for employment but they refused. The employer stated that the union has not made out any case for granting its demands and hence the reference is liable to be rejected. The union thereafter filed rejoinder at Exb. 4.

4. On the pleadings of the parties, following issues were framed at Exb. 5.

1. Whether the Party II proves that presently no workman on whose behalf the demands have been raised by the union is working in their firm as contended in para. 3 of the written statement Exb. 3 ?
2. If so, whether the reference itself does not survive at all and whether the reference is bound to be out rightly rejected on this count ?
3. Whether the demands made by the union on behalf of the workmen are unreasonable and irrational as contended in para. 2 of the written statement ?
4. Whether the firm is making substantial profit and has sufficient financial resources to meet the additional burden arising out of the charter of demands ?

5. Whether the demands made by the union before the management are justified and what order should be made in respect of the demands ?

5. My findings on the issues are as follows:

Issue No. 1: In the affirmative.

Issue No. 2: Reference survives and is not liable to be rejected.

Issue No. 3: In the affirmative.

Issue No. 4: In the negative.

Issue No. 5: In the negative.

REASONS

6. *Issue 1:* The present dispute has been raised by the Goa Trade and Commercial Workers Union. In the claim statement the Union claimed that 13 workers out of the 40 workers working with the employer became the members of the said Union. Therefore obviously the demands were raised by the union on behalf of the said 13 workers. The union has examined the workman Shri Gunaji Rasaikar. He has stated in his deposition that he became the member of the said union on 4th December, 1988, and that the 13 workers who were working with him had also become the members of the said union. He has stated that the union submitted the charter of demands dated 26-12-88 to the employer. This means that the charter of demands was submitted by the union on behalf of the 13 workers who had become its members. In the cross examination he admitted the resolution dated 12-12-1988 Exb. E- 1 signed by the workers. The said resolution is signed by 11 workers and

it mentions that the said 11 workers had resolved to enroll themselves as the members of Goa Trade and Commercial Workers Union. Therefore though it is the case of the union and the workers that 13 workers had become the members of the said union, the resolution proves the membership of 11 workers. The contention of the employer is that none of the workers on whose behalf the demands were raised by the union are working with the employer. As mentioned earlier, according to the union 13 workmen were its members. In para. 11 of the statement of claim, the union itself has stated that the employer terminated the services of all the 13 workmen w.e.f. 30-5-1989, and the dispute about termination of their service registered as IT/73/89 is pending before the Tribunal for adjudication. The employer in para. 11 of the written statement has admitted that the services of the 13 workmen were retrenched because no work could be provided to them and further stated that when certain work was received by the employer they were called individually for that employment which they received. Thus the above evidence shows that from 30-5-1989 that is, from much prior to the date of making the reference by the Government the 13 workmen who were the members of the union and on whose behalf the dispute was raised by the union are not working with the employer. I, therefore hold that the employer has succeeded in proving that no workmen on whose behalf the demands were raised by the union are working with the employer from 30-5-89. In the circumstances, I answer the issue No. 1 in the affirmative.

7. *Issue No. 2:* While discussing the issue No. 1, it has been held by me that the 13 workmen on whose behalf the demands were raised by the union are not in employment of the employer. It has been held by me that no workmen on whose behalf the demands were raised by the union are working with the employer from 30-5-1989. The contention of the employer is that in view of the above facts the reference does not survive. I do not agree with this contention of the employer. The demands were raised by the union by letter dated 26-12-1988. The union has demanded flat rise in salary of Rs. 250/- per month on the basic salary as on 1-12-1988. In the claim statement the union has demanded that the demands be granted with effect from 26-12-1988. The demands of the union if granted would be applicable from the month of December or January, 1988. Therefore, if the demands are granted the 13 workmen who are no more in employment from 30-5-89 would be entitled to the benefits at least till the date they were in employment of the employer. This being the case the reference would survive even though the workmen on whose behalf the demands are raised by the union are no more in service of the employer from 30-5-89. In the circumstances, I hold that the reference survives and the same is not liable to be rejected. Hence, I answer the issue No. 2 accordingly.

8. *Issue Nos. 3, 4 and 5:* All these issues are taken up together because they are interrelated. It is well settled that the main factor which is to be considered for granting the demands of the workmen is the financial capacity of the employer. If the demands of the workmen

are granted it would put additional financial burden on the employer and therefore the union has to prove that the financial capacity of the employer is such that the employer is in a position to bear this additional financial burden. The Bombay High Court in the case of V.N.S. Engineering Services v/s Industrial Tribunal, Goa, Daman and Diu reported in FJR Vol. 71 pg. 393 has held that the obligation to lead evidence to establish an allegation is on the party making an allegation, the test being that he who does not lead evidence must fail. The Bombay High Court has further held that the provisions of Rule 10B of the Industrial Disputes (Central) Rules, 1957 clearly indicates that the party who raises an industrial dispute is bound to prove the contentions raised by him and the Industrial Tribunal or Labour Court would be erring in placing the burden of proof on the other party to the dispute. In the instant case the demands were raised by the union on behalf of the workmen against the employer and since the said demands were not met the union raised the dispute and the reference of the dispute for adjudication was made by the Government at the instance of the union. Therefore applying the law laid down by the Bombay High Court in the above referred case the burden was on the union to prove that the demands raised on behalf of the workmen are rational, reasonable, legal and justified. The burden was also on the union to prove that the financial position of the employer was good enough to bear the additional burden in case the demands were granted. It is to be seen whether the union discharged this burden.

9. The union has examined one Shri Gunaji Rasaikar whereas the employer has examined one Shri Damaciano Pereira, Shri Gunaji Rasaikar was working with the employer as a cutter. The employer has not disputed this fact. As far as the evidence of Shri Gunaji Rasaikar is concerned the same is not of any help to the union. He has stated in his evidence that the employer used to pay Rs. 22/- to Rs. 26/- per day as wages to the worker when in the year 1988 the other barge repairers used to pay Rs. 50/- to Rs. 60 per day as wages to the worker. This statement of Shri Rasaikar is not supported either by oral evidence or any documentary evidence. In his deposition he stated that the employer earns about Rs. 1,20,000/- as profit on repairs of each barge. However, in his cross examination he stated that he had stated that the employer does the repair work of Rs. 1,20,000/- of each barge. He stated in cross that he does not know to read profit and loss account of the balance sheet and that he does not know what types of account books the employer maintains. He stated that he does not know to read and write English and that he has not read the charter of demands but he got it read from some other person. He stated that he does not remember how much rise in wages has been asked in charter of demands. Except for producing the letter dated 26th December, 1988 Exb. W-1 raising charter of demands and the minutes of the meeting dated 11-5-1989 Exb. W-2 wherein failure is recorded, no other document has been produced by the union. Thus there is absolutely no evidence from the union in support of the charter of demands raised against the employer. There is absolutely

no evidence from the union as regards the earning capacity/financial capacity of the employer and as regards the amount of profit which the employer derived every year out of its business. The employer's witness Shri Damaciano Pereira has denied in his evidence that the employer has any financial capacity to meet the demands of the union. The union did not rely any account books of the employer or any other document of the employer which could prove the financial condition of the employer nor the union called upon the employer to produce any document to prove that their financial position was sound. Thus the demands submitted by the union are without any basis and without knowing the financial capacity of the employer. Therefore the said demands are irrational and unreasonable. The demands of the union for granting leave and uniforms to the workmen does not survive because the workmen on whose behalf the demands were raised by the union are no more in service of the employer. In the circumstances, I hold that the union has failed to prove that the demands raised by it against the employer on behalf of the workmen are legal and justified. I therefore, answer the issue No. 3 in the affirmative; the issue No. 4 in the negative and issue No. 5 also in the negative. I hold that the workmen on whose behalf the union raised the demands are not entitled to any relief.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the demands raised by the Goa Trade & Commercial Workers' Union before the management of M/s Antonio Pereira & Company, Sancoale, are not legal and justified. It is hereby further held that the workmen are not entitled to any relief.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. 28/7/2001-LAB

The following Award dated 11-7-2002 in reference No. IT/79/96 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Angela Menezes, Joint Secretary (Labour).

Panaji, 31st July, 2002.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

No. IT/79/96

Workmen rep. by the
General Secretary,
Gomantak Mazdoor Sangh,
Kamakshi Krupa,
Khadapa Bandh,
Ponda Goa.

... Workman/Party I

V/s

The Madgaon Consumer's
Co-op. Society Ltd.,
Margao Goa.

... Employer/Party II

Workmen/Party I - Represented by Adv. Shri P. Gaonkar.

Employer/Party II - Represented by Adv. Shri M. S.
Bandodkar.

Panaji, dated: 11-7-2002.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, (Central Act 14 of 1947) the Government of Goa by order dated 4th December, 1996 bearing No. IRM/CON/SG/(56)/1996/12380 referred the following dispute for adjudication of this Tribunal.

Whether the demands as mentioned in the Annexure 'A' annexed hereto, and served by Gomantak Mazdoor Sangh on the management of The Madgaon Consumer's Co-op. Society Limited, Margao-Goa, are legal and justified ?

If so, to what relief the workmen are entitled ?

ANNEXURE - A

CHARTER OF DEMANDS

Demand No. (1). Scale of Pay:

Grade No. I. 1050-55-1325-60-1625-65-1950. Clerk.

Grade No. II. 950-50-1200-55-1475-60-1775. Weighmen.

Demand No. (2). Flat Rise: Union demands that all the workmen should be given flat rise of Rs. 300/- after adding the amount, they should be fitted in the revised grade.

Demand No. (3). Fixed Dearness Allowance: Union demands that all the workmen should be given additional rise of Rs. 200/- in the existing Fixed Dearness Allowance.

Demand No. (4). Variable Dearness Allowance: Union demands that all workmen should be paid VDA at the rate of Rs. 2.60 per point rise beyond 1200 AICPI (1960-100) and

the same should be revised every three months on the basis of point rise during the preceding three months available point of AICPI 1960-100.

Demand No. (5). House Rent Allowance: Union demands that all workers should be paid HRA at the rate of Rs. 20/- per month.

Demand No. (6). Travelling Allowance: Union demands that all the workers should be paid TA at the rate of Rs. 100/- per month.

Demand No. (7). Leave: Union demands that leave should be granted as mentioned below:—

(a) **Earned Leave:** Union demands that earned leave should be given at the rate of 35 days leave every year.

(b) **Sick Leave:** Union demands that 12 days sick leave should be given to each workman per year, as the ESIC does not pay the wages for the first two days of sickness.

(c) **Casual Leave:** Union demands that all the workers should be given Casual Leave at the rate of 12 days CL per year.

Demand No. (8) (a) Uniform: Union demands that all the workmen should be provided with two sets of Uniforms per year in the month of February.

(b) **Washing Allowance:** Union demands that all the workmen should be paid Washing Allowances at the rate of Rs. 40/- p.m.

(c) **Seniority increments:** Union demands that all the workmen should be given seniority increments as under:-

Those workmen who have completed more than two years should be given Two increments and those workmen who have put less than two years service should be given one Increment.

Demand No. (9). Medical Allowance: Union demands that Rs. 1200/- should be paid towards the Medical Allowance per year.

Union reserves the right to amend, add, delete any clause of the Charter of Demands during the time of negotiations.

2. On receipt of the reference a case was registered under No. IT/79/96 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workmen/Party-I (for short, 'Union') filed its statement of claim at Exb. 3. The facts of the case in brief as pleaded by the Union are that the employer/Party-II (for short, 'employer') is a co-op. society registered under Co-op. Societies Act and is engaged in the business of selling consumer products, including the goods on ration card. That the employer had employed 14 workmen in the shops run by them and has sound financial capacity to meet the charter of demands submitted by the union.

That the workers of the employer joined the union in September, 1995 and this fact was informed to the employer by the union vide letter dated 14-9-95. That thereafter the union submitted charter of demands dated 19-9-95 to the employer and on failure of the management to negotiate on the demands request was made to the Dy. Labour Commissioner to intervene in the matter. That the employer did not attend the conciliation proceedings and therefore the conciliation ended in failure and the dispute was referred to the Industrial Tribunal for adjudication. That Goa being a Tourist State, the cost of living is highest in the country and the present wages paid to the workers are very low, and therefore the workmen are not able to meet the minimum expenses such as food, clothing, medical expenses of the family, education of children etc. The union stated that the demands submitted by it are legal and justified and hence the same may be granted.

3. The employer was given opportunity to file their written statement. Though the employer was duly served with the notice, none appeared on their behalf and therefore the case was proceeded ex-parte against them on 27-2-97 and subsequently ex-parte evidence of the workmen was recorded and the arguments were also heard. However before the Award was passed the employer filed an application dated 24-2-98 at Exb. 5 for allowing them to file written statement and to lead evidence in the matter. After hearing the parties this Tribunal passed the order dated 14-7-98 dismissing the said application of the employer. In the circumstances there is evidence of the union only in the case and there is no written statement nor any evidence on behalf of the employer. However, the employer was permitted to advance arguments on the basis of the evidence which is on record. Besides making oral submission the union as well as the employer filed written arguments.

4. The Union has submitted that the demands were raised by it vide letter dated 19-9-95, and since the employer did not consider the said demands, dispute was raised before the Dy. Labour Commissioner, Margao and since no settlement was arrived at, failure report dated 6-11-96 (Exb. W-5) was submitted to the Government. The Union has submitted that it has produced the balance sheet of the employer for the year 1994-95 (Exb. W-2) as also the draft budget estimate for the year 1995-96 (Exb. W-3), which according to the union show that the employer has the financial capacity to pay and there are reserved funds available with them. The union has submitted that there are two category of workers working with the employer namely clerk and weighmen and there is no revision in their wages from the year 1992 and the wages which are paid to them are meagre. The union has submitted that the workers are entitled to bare minimum wage and in this respect has relied upon the norms accepted by the Tripartite Committee of the Indian Labour in the Conference held in New Delhi in the year 1957 for fixation of minimum wages. In the written arguments the Union has worked out minimum wage payable to an employee on the basis of the said norms which according to the union comes

to Rs. 3661.89 p. p.m. and it is based on the prices prevailing in Goa in June, 1996. The Union has also given the gross wage drawn by each workman of the employer as on 1-4-1999. The Union has relied upon the judgement of the Supreme Court in the case of the workmen, represented by Secretary V/s. the Management of Reptakos Brett. & Co. Ltd. and another reported in 1992 LLR pg. 1 and in the case of Standard Vacuum Refining Company V/s. its workmen reported in 1961 (3) SCR 536, on the concept of need based minimum wages. Shri P. Gaonkar representing the union submitted in the course of his oral arguments that he is not pressing for the leave demand and the demand towards medical allowance.

The employer on the other hand has submitted that the union has not justified the demands made against them, nor the union has produced any evidence to show that the employer could take the burden of any increase in the existing emoluments. The employer has submitted that the financial position of the employer is an important factor and the fair wage or the living wage can be imposed only if the employer is capable of meeting the extra burden. The employer has submitted that for determining the financial capacity of the employer or the industry, the factors which are required to be considered are a) the progress of the industry in question; b) the prospects of the industry in question; c) the existence and extend of profits of the industry; d) the nature of demand which the industry is expected to secure and e) the extent of the burden and its gradual increase which the industry may have to face. The employer has submitted that for considering the question like wage structure, dearness allowance, and other similar conditions of services, the principal of Industry-cum Region is to be applied and the Tribunal has to compare the wage scales prevailing in similar concerns in the region with which it is dealing and that there should be clear cut evidence and more particularly documentary evidence and not oral evidence in dealing with the comparable characters of the units or an undertaking. The employer has submitted that the union has failed to bring on record any acceptable evidence as required in the case of an adjudication of Charter of demands. The employer has submitted that the union has not brought anything on record to show as to what wages were or are being paid to the workers. The employer has stated that the appointment of Mr. Salvador Pacheco clearly shows that they are paying wages and other emoluments to the workmen very fairly and there is no justification or evidence before this Tribunal to justify any revision in the existing emoluments. In support of their contention the employer has relied upon the judgement of the Supreme Court in the case of (1) Ahmedabad Mill Owners Association V/s. Textile Labour Association reported in 1966 1 LLJ (2) Unichem Laboratories Ltd. V/s. the Workmen reported in 1972 1 LLJ 576, (3) Crown Aluminium Works V/s. Their workmen, reported in 1958 1 LLJ 6. (4) Hindustan Times V/s. Their workmen reported in 1963 1 LLJ 108 (5) Indian Express (P) Ltd. V/s. Their workmen, reported in 1959 1 LLJ 431, (6) Workmen of Gujrat Electricity Board V/s.

Gujrat Electricity Board, reported in 1969 II LLJ 791; (7) Workmen of Shree Bajarang Jute Mills Ltd. V/s. The employers of Bajarang Jute Mills Ltd. reported in 1970 II LLJ 6; (8) D.C.M. Chemical Works V/s. Its workmen, reported in 1962 I LLJ 388; (9) Airlines Hotel (P) Ltd., V/s. Their workmen, reported in 1961 I LLJ 663 (10) Atic Industries Ltd. V/s. Workmen reported in 1972 Lab. IC 632; (11) French Motor Co. Ltd. V/s. Their workmen, reported in 1967 II LLJ 744; Unichem Laboratories Ltd. V/s. The workmen, reported in 1972, I LLJ 576, (12) Workmen of Jessop & Co. Ltd. V/s. Jessop & Co. Ltd.; reported in 1964 I LLJ 451; (13) Remington Rand of India V/s. Its workmen reported in 1962 I LLJ 287; (14) Bharat Iron Works V/s. Bhagubhai Patel reported in 1976 Lab. IC. 4; the employer has also relied upon the judgment of the Bombay High Court in the case of B. P Steel Industry (I) Ltd. V/s. Industrial Worker's Union and others reported in 1998 II CLR 611 and that of the Madras High Court in the case of K.E.H. Abdul Samad Saheb Co. V/s. Industrial Tribunal, reported in 1963 I LLJ 504 and in the case of T.M. Abdul Rahim and Co. (Maharaja Beedi Factory) V/s. North Arcot District Beedi Worker's Union, reported in 1958 II LLJ 736.

5. In the present case only the evidence from the Union is on record. The Union has examined its General Secretary and no one else. It has not been disputed by the employer that the demands were raised by the Union vide letter dated 19-9-95. The said letter has not been produced by the Union. However the demands made by the Union have been reproduced in the order of reference dated 4th December, 1996. The demands are for (1) Fixation of Pay Scale being that for Clerk 1050-55-1325-60-1625-65-1950 and for weighman 950-50-1200-55-1475-60-1775 (2) Flat rise of Rs. 300/- for all workmen and that after adding the amount they should be fitted in the revised grade (3) Additional rise of Rs. 200/- in the existing Fixed Dearness Allowance of all workmen. (4) V.D.A. at the rate of Rs. 2.60 per point rise beyond 1200 A.I.C.P.I. (1960-100) and that the same should be revised every three months on the basis of point rise during the preceding three months available point of AICPI 1960-100. (5) House Rent Allowance at the rate of Rs. 20/- p.m. to all workers. (6) Travelling allowance at the rate of Rs. 100/- p.m. to all workers. (7) Earned leave of 35 days every year; sick leave of 12 days every year and casual leave of 12 days every year to each workman. (8) Two sets of Uniforms per year in the month of February to all workmen. (9) Washing allowance of Rs. 40/- p.m. to all workers. (10) Two increments to all workers who have completed more than two years service and one increment to all workers who have completed less than two years services and (11) Medical Allowance of Rs. 1200/- per year to all workers.

6. As mentioned earlier the union has examined only one witness, that is Shri Puti Gaonkar, its General Secretary. He has filed his affidavitory evidence. He has stated that the employer has employed 14 workmen in the shops run by them. He has stated that the employer sells consumer products including supply of rations to the public and that they have the capacity to meet the

demands of the union. He has stated that the workers of the employer joined the union in September, 1995 and thereafter Charter of demands dated 19-9-95 was submitted to the employer and since the management failed to negotiate, the Dy. Labour Commissioner, Margao was requested to intervene in the matter. He has stated that no settlement could be arrived at in the conciliation proceedings as a result of which conciliation ended in failure. He has stated that no revision has taken place since the year 1992 and since the wages paid to the workmen are very low they are unable to meet the minimum expenses such as food, clothing, medical expenses, education of children. He has submitted that the demands are raised on behalf of the workmen to secure better living conditions for them. He has produced the letters of appointment of workmen Shri Salvador Pacheco, Shama Naik, Laxman Shirodkar, Lawrence Almeida and Shiva Shirodkar at Exb. W-1 colly; the balance sheet of the employer for the year 1994-95 alongwith the notice of annual General Body meeting at Exb. W-2; the draft budget estimate for the year 1995-96 at Exb. W-3; the annual report of the Managing Committee for the year 1994-95 dated 6-8-95 at Exb. W-4 and the failure report of the Dy. Labour Commissioner dated 6-11-96 at Exb. W-5. There is no cross examination of Shri Puti Gaonkar from the employer nor there is any evidence from the employer in the present case. However, the burden was on the union to prove that its demands are legal and justified. It is therefore to be seen whether the union has discharged this burden.

7. In the case of D. C. M. Chemical Works V/s Its workmen (Supra) the Supreme Court has held that the Industrial Tribunal should be careful while increasing the wages and while considering to increase the wages. The Tribunal should be careful that it should not lead to the closure of the business itself. In the case of Ahmedabad Millowner's Association (Supra) the Supreme Court has held that in trying to recognise and give effect to the demand of dearness allowance to provide for adequate neutralisation against ever increasing rise in the cost of living, industrial adjudication must always take into account the problem of the additional burden which such wage structure would impose upon the employer and ask itself whether the employer can reasonably be called upon to bear such burden. In the case of B.P Steel Industries (P) Ltd. (Supra) the Bombay High Court has held that before any increase could be ordered by any industrial adjudication the adjudicator had to be satisfied positively that the financial condition of the employer is such as will enable it to bear the additional burden imposed. Therefore as per the law laid down by the Supreme Court and the Bombay High Court before granting demand including revision in pay scale, increase in wages, dearness allowance, the Tribunal has to take into consideration the financial capacity of the employer because if the demands are allowed, there will be additional financial burden on the employer and it is to be seen whether the employer will be able to bear this additional financial

burden. The Supreme Court in the case of *Jessop & Co.* (Supra) has held that it is well settled that wages including wage scale are fixed on region-cum-industry basis, one of the reasons being that concerns of more or less the same standing in the same industry should have more or less the same standing in the same industry.

8. In the present case the union has produced the balance sheet of the employer for the year 1994-95 at Exb. W-2, the draft budget estimate for the year 1995-96 at Exb. W-3 and the annual report of the Managing Committee for the year 1994-95 at Exb. W-4. According to the union the above said documents show that the financial position of the employer is sound. There is no substance in this contention of the union. In fact the above said documents produced by the union are not authenticated. They are the unsigned copies and they do not carry anything to show that they are the documents of the employer. However, even if the said documents are considered as genuine, the draft budget estimate for the year 1995-96 Exb. W-3 shows that though the estimated net profit for the year 1994-95 was Rs. 1,12,000/- actually it was only Rs. 7,299.01. The Annual report of the Managing Committee Exb. W-4 mentions that for the year 1994-95 there was a decrease of Rs. 65,346.21 in the net profit than for the year 1993-94, and the reasons given for the decrease in the net profit are decrease in the sale of non-controlled goods and decrease in the quantitywise sale of rice, wheat and sugar. This shows that the financial position of the employer was not sound and its business was not running properly. There was a heavy decline in the profit out of the business carried on by the employer. In my view therefore the employer will not be in a position to bear the additional burden if the demands of the union including demands for revision of pay scale, increase in wages, dearness allowance are granted. As held by the Supreme Court in the case of *Jessop & Co.* (Supra) wages including wage scales are to be fixed on region-cum-industry basis. However, the union has not led any evidence in this respect. In the circumstances the demand of the union for revision in the pay scale, increase in wages, dearness allowance cannot be granted. The union has tried to contend that the workers of the employer are entitled to bare minimum wage and this bare minimum wage is to be paid to the workers irrespective of the fact whether the employer has the capacity to pay the same or not. In support of this contention the union has relied upon the norms accepted by the Tripartite Committee of Indian Labour in the conference held in New Delhi in the year 1957 for fixation of minimum wages. The union has also relied upon the judgment of the Supreme Court in the case of the management of *Reptakos Brett & Co. Ltd.* (Supra) and in the case of *Standard Vaccum Refining Company* (Supra). The union has in the written arguments worked out the bare minimum wage to which according to the union the workmen are entitled to. The union has worked out the bare minimum wage at Rs. 3661.89 p.m. The basis on which the bare minimum is worked out are given by the union in the said written arguments. There is no support either oral or documentary to the said

basis. The basis on which the minimum wage has been worked out ought to have been the part of the evidence and the same ought to have been supported by some documentary evidence. Mere statements by the union in their written arguments cannot be accepted. Also, the union has not brought on record what was the wage of the workmen prior to the submitting of demand so as to find out whether the wages which were paid to the workmen were less than the bare minimum wage. There is absolutely no evidence in this respect. The union has not examined any workman as witness. The union has given the wages drawn by the workmen as on 1-4-99 in its written arguments. It is not supported by any evidence. All these particulars ought to have come in the evidence of the union. The statement made in written arguments and that too which is not supported by any evidence cannot be accepted. Therefore the bare minimum was claimed by the union cannot be granted.

9. The union has made the demand towards house rent allowance, Travelling allowance, uniforms, washing allowance, seniority increments etc. It has been mentioned by me earlier that the evidence which has been produced by the union itself regarding the financial capacity of the workmen shows that financial condition of the employer is not sound. The business of the employer has not been running satisfactorily, and the same has been declining. Therefore the employer would not be in a position to bear the additional burden. Also there is no evidence from the union on region-cum-industry basis. There is no evidence from the union as to the place which the workmen used to come to report for duties or the distance which the workmen had to travel. In the circumstances the above demand cannot be granted. Shri Puti Gaonkar, representing the union had submitted in the course of his oral submissions that he is not pressing for the leave demand and the demand towards medical allowance as claimed in the Charter of demands. Therefore these demands are deemed to have been given up by the union.

10. In the light of what is discussed above I am of the view that the union has failed to make out a case for grant of the demands made by it against the employer. There is no justification whatsoever for the demands raised in the Charter of demands. I therefore hold that the demands raised by the union in the Charter of demands dated 19-9-95 are not legal and justified and hence the workmen are not entitled to any relief.

In the circumstances I pass the following order.

ORDER

It is hereby held that the demands mentioned in Annexure 'A' of the order of Reference served by the Gomantak Mazdoor Sangh on the management of the Madgaon Consumer's Co-op. Society Limited, Margao Goa are not legal and justified. It is hereby further held that the workmen are not entitled to any relief.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. 28/7/2001-LAB

The following Award dated 3-10-2002 in reference No. IT/13/2000 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 24th October, 2002.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/13/2000

Workmen Rep. by
All India Trade Union Congress,
Velho's Bldg., 2nd Floor,
Opp. Municipal Garden,
Panaji-Goa.

Workmen/Party I

V/s

M/s. Automobile Corporation of Goa Ltd.,
Canteen, Honda,
Sattari, Goa.

Employer/Party II

Workmen-Party I - Represented by Adv. Shri Suhas Naik.

Employer-Party II - Represented by Adv. Shri M. S. Bandodkar.

Panaji, dated: 3-10-2002.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 8th February, 2000 bearing No. IRM/CON-MAP/(129)/99/713 referred the following dispute for adjudication of this Tribunal.

"Whether the following demands raised by the Goa State Committee of All India Trade Union Congress on behalf of the Canteen Workers of M/s. Automobile Corporation of Goa Limited, before the management of M/s. Automobile Corporation of Goa Limited, Canteen, Honda, Sattari-Goa are legal and justified?

If yes, to what relief the workmen are entitled?

DEMANDS

Demand No. (1):- Basic Pay: It is demanded that each workman be given a rise of Rs. 400/- per month in his Basic Pay.

As the existing Pay-scale will not accommodate the aforesaid rise of Rs. 400/- per month, the pay-scales be revised as under and the workmen be placed in the scales as per their length of service.

(i) Skilled: 850-100-1350-125-1975-150-2725-175-3600.

(ii) Semi-Skilled: 700-85-1125-105-1650-125-2275-150-3025.

(iii) Un-Skilled: 550-65-875-85-1300-105-1825-125-2450.

Demand No. (2):- Fixed Dearness Allowance (FDA): It is demanded that each workman be paid Fixed Dearness Allowance (FDA) at the rate of Rs. 800/- per month.

Demand No. (3):- Variable Dearness Allowance (VDA): It is demanded that each workman be paid Variable Dearness Allowance (VDA) at the rate of Rs. 2.00/- per point rise.

Demand No. (4):- House Rent Allowance (HRA): It is demanded that each workman be paid House Rent Allowance (HRA) at the rate of Rs. 700/- per month.

Demand No. (5):- Conveyance Allowance: It is demanded that each workman be paid Conveyance Allowance at the rate of Rs. 200/- per month.

Demand No. (6):- Leave Travel Allowance: It is demanded that each workman be paid Leave Travel Allowance at the rate of Rs. 1000/- per year.

Demand No. (7):- Medical Allowance: It is demanded that each workman be paid Medical Allowance at the rate of Rs. 1200/- per year.

Demand No. (8):- Uniforms: It is demanded that each workman be given two pairs of uniforms per year.

Demand No. (9):- Washing Allowance : It is demanded that each workman be paid Washing Allowance at the rate of Rs. 200/- per month.

Demand No. (10):- Food Allowance : It is demanded that each workman be paid Food Allowance at the rate of Rs. 200/- per month.

Demand No. (11):- Night Shift Allowance : It is demanded that each workman be paid Nigh Shift Allowance at the rate of Rs. 45/- per shift.

Demand No. (12):- Leave : It is demanded that each workman be entitled to Privilege Leave at the rate of one day for every fifteen days worked. Privilege Leave be allowed to be accumulated upto a period of 180 days.

(ii):- Casual Leave: It is demanded that each workman be entitled to Causal Leave of 4 days per year.

(iii):- Sick Leave : It is demanded that each workman be entitled to Sick Leave of 4 days per year.

Demand No. (13):- Weekly-Off: It is demanded that all workmen be given Weekly-off on Sunday and the Canteen be closed on Sunday.

Demand No. (14):- Loan and Advances: (i) It is demanded that 50% of the interest on loan for construction/purchase/repairs of residential houses availed by the workman upto a ceiling of Rs. 10,000/- be paid by the management.

(ii) It is demanded that 50% of the interest on loan for marriage of self or members of his family availed by the workman upto a ceiling of Rs. 10,000/- be paid by the management.

Demand No. (15):- Miscellaneous: (i) It is demanded that two office bearers-representatives of the Union attending to Union work, such as, meetings in the office of the Labour Commissioner, Court, Tribunal, etc., be treated as on duty.

(ii) It is demanded that all office-bearers of the Union be placed in the first shift to enable them to attend the monthly meetings of the Union. A period of one hour in a week be allotted for the monthly meeting of the union and the office bearers of the union attending the meeting be treated as on duty during the period.

(iii) It is demanded that housing colony for workers be constructed by the management.

2. On receipt of the reference a case was registered under No. IT/13/2000 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workmen/Party I (for short, "Union") filed statement of claim at Exb. 4. The facts of the case in brief as pleaded by the union are that the Employer/Party II (for short, "employer") is engaged in the business of building bus bodies for various types of vehicles including medium, small and big luxury and semi-luxury buses. That the employer is also engaged in the business of manufacturing process of various automobile components and caters to various clients in India and outside India and receives export order and derive huge profit every year out of the said business. That the wages paid to the permanent workers of the employer are higher than paid to the workers in the canteen of the employer and the present wages paid to these workers do not take care of rising cost of living index. That the employer make huge profit year and though losses are shown artificially by manipulating the statement of account the employer has accumulated lot of unaccounted profits and the said profits are diverted to various other business and new factories are set up in Pune, Pimpri, Jejuri etc. That the employer is in better financial position to bear the burden of making the payment of enhanced wage packets which are necessary for the survival of the workers. That after the receipt of the charter of demands the employer started harassing and victimising the workers. That the workers working in the canteen of the employer have not been properly designated, no proper pay scales have been given to them and the existing wages are not sufficient to bear the expenses of house rent and other expenses. That the VDA paid to the workers is much lower than paid to the permanent workers working in bus body division and metal division of the employer. That inspite of the repeated requests made to the employer to settle the charter of demands raised by the union vide letter dated 21-4-99, the employer failed to do so and took adamant and rigid stand. That therefore the union raised industrial dispute before the Asst. Labour Commissioner, Mapusa, vide letter dated 19-7-99. That the conciliation proceedings held ended in failure because of the rigid and adamant stand taken by the employer. The union stated that the employer is making huge profits and is in a good financial position to meet the demands of the workmen. The union stated that the demands raised by it on behalf of the workers are fair and proper and they are legal and justified.

3. The employer filed written statement at Exb. 5. The employer stated that the union has no authority from the workers to file statement of claim on their behalf as on the date of the filing of the statement of claim all the workers had left the employment under Voluntary Retirement Scheme and as such the employer-employee relationship between the workers working in the

canteen and the employer does not exist. The employer stated that on this count the reference is liable to be rejected. The employer stated that none of the demands raised by the union on behalf of the workers are legal and justified and no tenable justification has been given by the union to justify its demands. The employer stated that they are making losses in the last several years due to the recession in automobile industry and the employer is finding difficulty even to pay the existing wages of the workers. The employer denied that the workers were harassed and victimised or that they were pressurised to accept the Voluntary Retirement Scheme. The employer stated that the union has not made out any case for granting the demand raised on behalf of the workers.

4. On the pleadings of the parties, issues were framed at Exb. 6 and thereafter the case was fixed for recording the evidence of the union in support of the demands raised by it. Several opportunities were given to the union to lead evidence but the case was adjourned at the request of the union on some ground or the other. On 22-7-2002 when the case was fixed for recording the evidence of the union Adv. Shri Suhas Naik representing the union submitted that he wants to file an application to the effect that the present dispute does not survive and accordingly at his request the case was adjourned to 5-8-2002 for filing the application. On this date Adv. Shri Suhas Naik prayed for time to file the application and accordingly the case was fixed on 27-8-2002 for filing the application. On this date Adv. Shri Suhas Naik did not file any application but the employer filed an application dated 27-8-2002 at Exb. 9 stating all the workers of the canteen had accepted voluntary retirement benefit scheme and severed relations with the employer and that they had collected their legal dues. The employer stated that since the workmen have already collected their legal dues on accepting voluntary retirement benefit scheme the dispute between the workmen and the employer does not survive. The employer therefore pray that no dispute award be passed in the matter. Adv. Shri Suhas Naik, representing the union admitted that all the workers of the canteen had accepted voluntary retirement scheme and made an endorsement on the application that the union had no objection for passing no dispute award. The demands in the present case were raised by the union on behalf of the canteen workers. The contention of the employer that the all the canteen workers had accepted voluntary retirement benefit scheme and had collected all their legal dues has not been disputed by the union. This being the case as stated by the employer there is no employer-employee relationship between the canteen workers and the employer and consequently the dispute does not exist and the reference does not survive. The union also has given no objection for passing no dispute award in the present case. In view of the facts stated above I hold that the reference does not survive as the dispute between the parties does not exist.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the reference does not survive as the dispute between the parties does not exist.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/7/2001-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa, on 21-10-2002, in reference No. IT/35/97, is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 8th November, 2002.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/35/97

Shri Dattaram Motte,
Sacral Wadi, Torsem,
Pednem - Goa. Workman/Party I

V/s

M/s. Kadamba Transport
Corporation Ltd.,
Panaji - Goa. Employer/Party II

Workman/Party I - Represented by Adv. Shri A. Kundaikar.

Employer/Party II - Represented by Adv. Shri A. Palekar.

Panaji, dated: 21-10-2002.

AWARD

In exercise of the powers conferred by sub-section (2) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 20th June, 1997 bearing No. IRM/CON-MAP(52)/97/2668 referred the following dispute for adjudication by this Tribunal.

"Whether the action of M/s. Kadamba Transport Corporation Limited, Panaji, in demoting Shri Dattaram Mote, from the post of Conductor to that of peon with effect from 11-9-1995, is legal and justified?

It not, to what relief the workman is entitled?"

2. On receipt of the reference the case was registered under No. IT/35/97 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workman/Party I (for short, "Workman") filed statement of claim at Exb. 4. The facts of the case in brief as pleaded by the workman are that he was appointed as a Conductor by the Party II/Employer (for short, "Employer") and he worked with the employer for about 12 years. That on 14-9-91 he was on duty on vehicle No. GA-01-X-0042 on route Malim-Marwad where the bus was intercepted by the Line checking staff and he was given a default notice mentioning the irregularities alleged to have been committed by him. That the workman filed reply to the said default notice denying the allegations made against him. That on 30-10-91 he received a charge sheet dated 30-10-91 alleging certain acts of misconducts against him. That he replied to the said charge sheet by his reply dated 28-12-91 denying the allegations made against them. That thereafter by order dated 3-1-92 he was informed by the employer that an inquiry would be conducted against him in respect of the charges levelled against him. That accordingly an enquiry was conducted into the charge sheet issued to him. The workman contended that the Inquiry Officer did not conduct the enquiry in a fair and proper manner and that the findings given by him are not based on the evidence on record. That thereafter he was issued with the show cause notice asking him to show cause why penalty should not be imposed on him and he replied to the said show cause notice. That the employer thereafter passed an order dated 11-9-95 whereby the workman was demoted from the post of Conductor to the post of peon. The workman contended that the order dated 11-9-95 passed by the employer demoting him from the post of Conductor to that of peon is illegal and unjustified. The workman therefore prayed that the said order be set aside and the employer be directed to pay the difference in wages from the date of illegal demotion to the date of relegation of the workman to the post of conductor with all consequential benefits. The workman also prayed that the employer be directed to continue his pay scale without any breakage which had occurred due to this illegal demotion.

3. The employer filed written statement at Exb. 6. The employer stated that the workman was appointed as substitute on daily wages vide order dated 30-3-85 and he was taken on probation with effect from 1-12-85. The employer stated that since the date of appointment the workman used to manipulate the revenue of the employer and he had committed number of misconducts for which he was warned and fined. The employer stated that on 14-9-91 the workman was checked by the Line

Checking staff and that found an excess amount Rs. 175.90 in his cash bag and since the act committed by the workman was of serious nature and the explanation given by him to the default notice was not satisfactory, he was issued a charge sheet dated 30-10-91. The employer stated that the explanation given by the workman to the charge sheet was not satisfactory and therefore a departmental enquiry was conducted against him. The employer stated that the enquiry was conducted in a fair and proper manner and the workman fully participated in the said enquiry. The employer stated that the Inquiry Officer submitted his findings holding that charges were proved against the workman and based on the findings of the Inquiry Officer a show cause notice dated 21-1-94 was issued to the workman asking to show cause why he should not be dismissed from service. The employer stated that by reply dated 12-4-94 the workman requested that lenient view be taken and his case be considered on humanitarian grounds. The employer stated that after considering the reply of the workman the disciplinary authority thought of giving an opportunity to the workman and therefore by way of punishment the workman was demoted from the post of conductor to that of peon vide order dated 11-9-95. The employer stated that the enquiry conducted against the workman is fair and proper and also the findings of the Inquiry Officer are based on the evidence on record. The employer denied that the punishment of demotion from the post of conductor to that of peon imposed upon the workman vide order dated 11-9-95 is illegal and unjustified. The employer denied that the workman is entitled to any relief as claimed by him. Thereafter the workman filed rejoinder at Exb. 7.

4. On the pleadings of the parties issues were framed at Exb. 7 and thereafter the case was fixed for the evidence of the parties on the preliminary issues No. 1 and 2 as the issue No. 1 related to the fairness of the enquiry and the issue No. 2 related to the proving of the misconduct in the enquiry conducted against the workman. Accordingly the examination in chief of the workman was recorded and thereafter the case was fixed for the cross examination of the workman. However, the cross examination of the workman was not conducted and the parties submitted that they are trying to arrive at an amicable settlement. Accordingly, at the request of the parties the case was fixed on 18-9-2002 for filing the terms of the settlement. Accordingly on this date Adv. Shri Kundaikar appeared along with the workman and Adv. Shri Palekar appeared on behalf of the employer. Both the parties submitted that the dispute was amicably settled and they filed the terms of settlement dated 30-9-2002 at Exb. 9. Both the parties prayed that consent award be passed in terms of the said settlement. I have gone through the terms of settlement which are duly signed by the parties and their respective advocates. I am satisfied that the terms of the settlement are certainly in the interest of the workman. I, therefore accept the submission made by the parties and pass the consent award in terms of settlement dated 30-9-2002 at Exb. 9.

ORDER

1. The Party I was demoted to the post of Peon in the pay scale of Rs. 2550-55-2660-60-3200/-. During the pendency of the reference the Workman/Party I was reverted back to the feeder post of Conductor in the scale of Rs. 3050-75-3950-80-4590/-. without any difference in wages.
2. It is agreed between the parties that the period of demotion till reversion to cadre post of Conductor shall be computed in the grade of the Conductor.
3. It is agreed between the parties that the Employer/Party II shall pay an amount of Rs. 17,000/- (Rupees Seventeen Thousand only) towards difference during the demotion period i.e. from 25-9-1995 to 30-6-1997, as full and final settlement.
4. It is agreed between the parties that the Employer/Party II shall pay the said amount within 15 days from the date of filing the consent terms.
5. It is agreed between the parties that, all the claims/disputes raised before this Hon'ble Tribunal/Labour Court by the Workman/Party I in the present matters shall stand conclusively settled and Workman/Party I shall have no claim or any extra monetary benefits except which is computed hereinabove.
6. It is agreed between the parties that in terms of present settlement claims raised in the matters bearing reference No. LCC/25/97, C-IT/95/99 and C-IT/96/99 shall also stand conclusively settled.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/7/2001-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa, on 16-10-2002, in reference No. IT/27/2001, is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 8th November, 2002.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/27/2001

Ms. Alsinha Mascarenhas & ors.,
H. No. 583/E, Igorjevaddo,
St. Jose de Areal,
P. O. Curtorim, Salcete-Goa. Workman/Party I

V/s

The Director,
M/s. Goa Winery and Distillery Pvt. Ltd.,
Mugale Nessai,
P.O. St. Jose de Areal,
Goa. Employer/Party II

Workmen/Party I - Represented by Adv. Shri Subhas Naik.

Employer/Party II - Represented by Adv. Shri G.B. Kamat.
Panaji, dated: 16-10-2002.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 14th May, 2001 bearing No. IRM/CON/SG/(20)/2001/2069 referred the following dispute for adjudication of this Tribunal.

"Whether the action of the management M/s. Goa Winery and Distillery Pvt. Ltd., St. Jose de Areal, Goa, in terminating the services of Ms. Alsinha Mascarenhas, Ms. Caetana Costa, Ms. Namita Madkaikar and Ms. Sumati Tuenkar, all helpers, with effect from 8-6-2001, is legal and justified?

It not, to what relief the workpersons are entitled?"

2. On receipt of the reference a case was registered under No. IT/27/2001 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workmen-Party I (for short, "Workmen") filed their statement of claim at Exb. 4. The facts of the case in brief as pleaded by the workmen are that the Employer-Party II (for short, "Employer") has its factory at St. Jose de Areal, Salcete Goa, and he is engaged in the business of production of various types of liquor and wines such as brandy, whiskey, rum, gin, port wine and that Mr. Satish Naik is the Proprietor of the said factory. That the workmen were employed as helpers with the employer and they worked continuously for more than 10 years. That on 8-6-2000 all the workmen reported for work as usual and they were called at about lunch time by Mr. Satish Naik and they were told that their services were terminated and they need not come for work from that day. That no

reasons were given for termination of their service nor they were given one month's notice nor wages in lieu of one month's wages nor they were given retrenchment compensation. That the employer did not prepare the seniority list nor followed the principle of "Last Come First Go". The workmen contended that the employer violated the provisions of Sec. 25F and 25G of the Industrial Disputes Act, 1947 while terminating their services. The workmen contended that the employer employed persons in the factory and did not re-employ the workmen thereby violating the provisions of Sec. 25H of the Industrial Disputes Act, 1947. The workmen contended that the employer has opened new factory in the name of Gajanan Distillery at Pernem and part of the work of this factory is being done in the said factory. The workman stated that they raised the dispute regarding termination of service before the Dy. Labour Commissioner and the conciliation proceedings ended in failure and the failure report was submitted to the Government. The workmen stated that they are unemployed and they have not been paid their legal dues also. The workmen stated that they are entitled to reinstatement in service with full back wages and continuity in service as termination of their service is illegal and unjustified.

3. The employer filed written statement at Exb. 5. The employer stated that on account of non availability of work, the work in the factory was suspended under the notice dated 8-6-2000 and the workmen were asked not to report for work tentatively till 31-7-2000 which period was further extended by 3 months i.e. till 31-10-2000 under written notice dated 1-8-2000 which was displayed on the notice board. The employer stated that subsequently the factory/establishment was permanently closed from 31-10-2000 and the services of the workmen were terminated by notice dated 31-10-2000 which was displayed on the notice board, w.e.f. 1-11-2000 by tendering all the legal dues such as notice pay, compensation etc., but none of the workmen reported at the factory for collecting their dues. The employer stated that they were engaged only in the business of bottling of Indian Made Foreign Liquor (I.M.F.L.) and not manufacture as alleged. The employer stated that Mr. Satchit Naik is the Contractor of the Employer-company and not the Proprietor as alleged. The employer denied that the services of the workmen were terminated from 8-6-2000 or that new persons were employed in the factory or that employer violated the provisions of Sec. 25H of the Industrial Disputes Act, 1947. The employer denied that they have opened a new factory by name M/s. Gajanan Industries at Pernem or that the part of the work of the employer-company is done in the said factory or that the workmen were required to be called for re-employment in the said factory as alleged. The employer denied that the services of the workmen were terminated without payment of legal dues or that the termination of their service is illegal and unjustified or that the workmen are entitled to reinstatement in service with full back wages or continuity of service or that the workmen are also entitled to wages by way of interim relief as claimed.

The employer stated that the workmen are not entitled to any relief as claimed by them. On the pleadings of the parties, issues were framed at Exb. 6. Thereafter the case was fixed for the evidence of the workmen. However, before the evidence was recorded both the parties submitted that they are trying to arrive at an amicable settlement and at their request the case was fixed on 10-10-2002 for filing the terms of the settlement. On this date, Shri Subhas Naik attended along with the workman and Adv. Shri G. B. Kamat appeared on behalf of the employer and they submitted that the dispute between the parties is amicably settled and they filed the terms of settlement dated 10-10-2002 at Exb. 8. They prayed that consent award be passed in terms of the settlement. I have gone through the terms of the settlement which are signed by the employer and the workmen and their respective representatives and I am satisfied that the said terms are certainly in the interest of the workmen. I, therefore, accept the submissions made by the parties and pass the consent award in terms of the settlement Exb. 8 dated 10-10-2002.

ORDER

1. The Workmen Ms. Alsinha Mascarenhas, Ms. Caetana Costa, Ms. Namita Madkaikar and Ms. Sumati Tuenkar agree that termination of their services by the Management of M/s. Goa Winery & Distillery Pvt. Ltd., with effect from 08-06-2000 is legal and justified.
2. In consideration of above, the Management of M/s. Goa Winery & Distillery Pvt. Ltd., pays an amount of Rs. 12,120/- (Rupees Twelve Thousand one hundred Twenty only) to each of the four workmen in cash who have received the same in settlement of all their demands, claims including claims for reinstatement/re-employment.

No order as to costs. Inform the Government accordingly.

Sd/-

(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/7/2001-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa, on 31-10-2002, in reference No. IT/49/2002, is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Dr. M. Modassir, Special Secretary (Labour).

Panaji, 21st November, 2002.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/49/2002

Workman rep. by

Gomantak Mazdoor Sangh,

Shetye Sankul, 3rd Floor,

Tisk, Ponda Goa.

... Workman/Party I

V/s

M/s. Hotel Mandovi,

Panaji Goa.

... Employer/Party II

Workman/Party I - Represented by Shri P. Gaonkar.

Employer/Party II - Represented by Adv. Shri U. J. Kamat.

Panaji, dated: 31-10-2002.

AWARD

In exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 30-7-2002 bearing No. 28/37/2002-LAB referred the following dispute for adjudication of this Tribunal.

1. Whether the action of the management of M/s. Hotel Mandovi, Panaji, in terminating the services of Shri Shekar Kankonkar, Helper with effect from 4-9-2001, is legal and justified?

2. If not, to what relief the workman is entitled?

2. On receipt of the reference a case was registered under No. IT/49/2002 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The case was fixed for filing of the statement of claim by the Workman/Party-I (for short, "workman"). However the workman did not file any claim statement and both the parties submitted that they are trying to arrive at an amicable settlement. At the request of the parties the case was fixed on 29-10-2002 at 10.30 a.m. On this date Shri P. Gaonkar appeared on behalf of the workman and Adv. Shri U.J. Kamat appeared on behalf of the employer. Shri Gaonkar filed an application dated 29-10-02 at Exb. -3 stating that after the termination of services of the workman by the management the matter was discussed and resolved amicably by considering the case of the workman for voluntary retirement scheme and he has been paid under VRS. The workman stated in the application that the dispute is resolved and hence no dispute award be passed in the matter. Adv. Shri U. J. Kamat representing the employer gave no objection for passing no dispute award in the matter.

3. Since according to the workman himself the dispute between him and the employer has been amicably

settled and this case has been considered by the employer under Voluntary Retirement Scheme and he has been paid VRS and that the dispute has been resolved, the dispute which has been referred by the Government for adjudication does not exist and consequently reference does not survive. In the circumstances I pass the following order.

ORDER

It is hereby held that the dispute between the workman Shri Shekar Kankonkar and the employer M/s. Hotel Mandovi does not exist and hence the reference does not survive.

No order as to cost. Inform the Government accordingly.

Sd/-

(Ajit J. Agni),

Presiding Officer,

Industrial Tribunal.

Notification

No. 28/7/2001-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa, on 15-11-2002, in reference No. IT/40/95, is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Dr. M. Modassir, Special Secretary (Labour).

Panaji, 27th November, 2002.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/40/95

Shri Naguesh Gawas,

H. No. 52, Behind the Church,

Bambolim, Ilhas - Goa.

... Workman/Party I

V/s

M/s. Kadamba Transport Corporation,

Panaji-Goa.

... Employer/Party II

Workman/Party I - Represented by Adv. Shri A. Nigalye.

Employer/Party II - Represented by Adv. Shri C.J. Mane.

Panaji, dated: 15-11-2002.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes

Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 18-8-95 bearing No. 28/23/95-LAB referred the following dispute for adjudication of this Tribunal.

"Whether the action of the management of M/s. Kadamba Transport Corporation Ltd., Panaji-Goa, in dismissing Shri Nagesh Gawas, Helper Mechanic, w.e.f. 31-5-1994 is legal and justified?

2. If not, to what relief the workman is entitled?"

2. On receipt of the reference a case was registered under No. IT/40/95 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party-I (for short, "Workman") filed its statement of claim at Exb. 5. The facts of the case in brief as pleaded by the workman are that he was employed with the Employer-Party II (for short, "Employer") as a helper mechanic, and his order of appointment was signed by the General Manager of the employer. That in the year 1991, he was posted at Panaji depot and on 15-5-91, he received an order signed by the Depot Manager stating that he was suspended from service with immediate effect. That on the same day, he received a charge sheet dated 15-5-91 wherein it was alleged that he had committed the theft of a starter which was thrown outside the compound wall of the depot. That a domestic enquiry was conducted into the charges which was not fair and proper and it was held in violation of principles of natural justice and the Inquiry Officer acted bias in favour of the employer. That he received a show cause notice dated 16-9-93 from the employer alongwith the copy of the findings of the Inquiry Officer and he was asked to show cause as to why he should not be dismissed from service. That he replied to the said show cause notice challenging the enquiry on various ground and also stated that the findings of the Inquiry Officer were not based on the evidence on record. That thereafter, he received an order dated 13-5-94 from the Dy. General Manager dismissing him from service. That he raised an industrial dispute before the Asst. Labour Commissioner and since the conciliation proceedings held by him resulted in failure, the Government made the present reference. The workman set out various grounds challenging the domestic enquiry held against him as also the order of dismissal passed against him. The workman contended that the termination of his services by the employer is illegal and unjustified and he is entitled for reinstatement in service with full back wages.

3. The employer filed the written statement which is at Exb. 6. The employer admitted that the workman was suspended and was chargesheeted. The employer denied that the domestic enquiry held against the workman is not fair, proper or impartial. The employer stated that the workman was given full opportunity to defend himself in the inquiry, and that the findings of the Inquiry Officer are based on the evidence on record. The employer stated that the Depot Manager was vested with the power to initiate disciplinary proceedings against the employees by issuing suspension order and

chargesheet. The employer contended that the dismissal order passed by the Deputy General Manager was legal and valid.

4. On the pleadings of the parties, following issues were framed at Exb. 7.

1. Whether the Party I proves that the domestic enquiry held against him is not fair, proper and impartial?
2. Whether the charges of misconduct levelled against the Party I proved to the satisfaction of the Tribunal by acceptable evidence?
3. Whether the Party I proves that the action of the Party II in terminating his services w.e.f. 31-5-94 is illegal and unjustified?
4. Whether the Party I is entitled to any relief?
5. What award?

5. Initially the issue No. 1 was treated as preliminary issue as it was touching the fairness of the enquiry and the case was fixed for evidence of the parties on the said issue. However, Adv. Shri Nigalye, the learned counsel for the workman, filed an application dated 19-7-96 at Exb. 9 stating that the workman was not pressing for the issue No. 1 and prayed that the said issue be deleted. Accordingly, order was passed deleting the issue No. 1. Thereafter, the case was fixed for evidence of the parties on other issues. Before the evidence could be recorded, Adv. Shri Nigalye filed an application for framing an additional issue. By order dated 29-4-97, the said application was dismissed by me holding that the framing of the proposed additional issue was premature and it was also held that the issue No. 2 is to be tried as preliminary issue in view of the decision of the Supreme Court in the case of Bharat Forge Company Ltd., v/s A.B. Zodge & Others reported in 1996 (43) FLR 1754 as the said issue was also connected with the domestic enquiry. The workman as well as the employer submitted that no evidence is required to be led on the issue No. 2 as the said issue pertains to the perversity of the findings of the Inquiry Officer and original records of the enquiry proceedings have been already produced by the employer. In the circumstances, arguments from the parties on the issue No. 2 were heard and thereafter this Tribunal by findings dated 20-3-98 held that the charge of misconduct is not proved against the workman in the enquiry and consequently the findings of the Inquiry Officer were set aside. The issue No. 2 was therefore decided in the negative, and thus the said issue stood disposed of.

6. After the findings on preliminary issue No. 2 were given, Adv. Shri Mane, representing the employer submitted that the employer has already filed an application on 4-4-97 for giving an opportunity to lead evidence to justify the action in case the enquiry is held to be not fair and proper. This being the case permission was granted to the employer on 20-3-98 to lead evidence before this Tribunal to prove the charge of misconduct

against the workman. Thereafter issue No. 2A was framed as additional issue and the parties were asked to lead evidence on the said issue as well as on the remaining issues and accordingly the parties led evidence.

Issue No. 2A: Whether the Party II proves that the Party I is guilty of the charges of misconduct levelled against him in the charge sheet dated 15-5-1991?

7. My findings on the issues are as follows:

- Issue No. 2A : In the negative.
- Issue No. 3 : In the affirmative.
- Issue No. 4 : As per para. 16 below.
- Issue No. 5 : As per order below.

REASONS

8. Issue No. 2A: Before discussing the evidence on this issue I would like to deal first with the objection raised by Adv. Nigalye, representing the workman. He has contended that this Tribunal cannot read the evidence led by the employer before this Tribunal after enquiry was set aside because there was no prayer to this effect from the employer in the written statement. In support of his this contention he relied upon the judgment of the Supreme Court in the case of Karnataka State Road Transport Corporation v/s Lakshmidewamma and another reported in 2001 II CLR 640. I have gone through the said judgment of the Supreme Court. In my view that the law is laid down by the Supreme Court in the said case is that there is no hard and fast rule that if no permission is sought in the written statement to lead additional to prove the charges in case the enquiry is set aside, the employer cannot be permitted at all to lead evidence before the Tribunal if request is made subsequent before the proceedings are concluded. The Tribunal has powers to give permission depending upon facts and circumstances and it is just and necessary in the interest of justice in appropriate cases. In the present case, it is true that the employer had not sought permission in the written statement to lead additional evidence to prove charges against the workman if the enquiry is set aside. The permission was sought by the employer subsequently by application dated 4-4-97 before the findings on the preliminary issue were given. Permission was granted to the employer on 20-3-98, that is, on the date when the findings on preliminary issue were given setting aside the enquiry. Thereafter above additional issue No. 2A was framed on 14-4-98 as to whether the employer proves that the workman is guilty of the charges of misconduct levelled against him in the charge sheet dated 15-5-91. The workman did not object to the framing of this additional issue. Thereafter the employer led evidence on the said issue and the workman also led evidence in support of his defence. No objection whatsoever was raised by the workman at any time to the leading of the evidence by the employer before this Tribunal to prove the charge of misconduct against him. Therefore in my view the workman is not justified in raising the contention at the stage of final

arguments that the evidence led before this Tribunal by the employer in support of the charges should not be read. If this contention of the workman is accepted it would cause great injustice and prejudice to the employer. I therefore reject the contention of the workman that the evidence led by the employer before this Tribunal after the enquiry is set aside cannot be read.

9. The charge sheet dated 15-5-91 issued to the workman produced at Exb. E-5. As per the said charge sheet the first charge against the workman is that on 15-5-91 at 1.10 hrs. he lifted the self starter No. 3040263 which was thrown outside the depot compound wall and started walking towards the bus stand when he was caught red-handed by the Security Assistant Shri Nanda Naik while he was walking away from the depot and hence it was clear that he was stealing the said self starter which was the property of the employer. The second charge is that he left the depot at 1.10 hrs. without permission from his superiors. As per the charge sheet the above act constituted serious misconduct under clause 28(1), (xv) and (xxiv) of the Certified Standing Orders of the employer.

10. In support of the charge sheet the employer has examined the Depot Manager Shri Anil Prabhu, the Security Assistant Shri Nanda Naik and one Shri Balaji Sawant. In defence the workman examined only himself. The first charge against the workman is that of committing theft of self starter bearing No. 3040263. The employer's witness Shri Anil Prabhu who was working as Depot Manager at Panaji at the relevant time stated that the workman was working as the mechanic at that time. He stated that the workman was working in the night shift on 14-5-91 and that at about 9 p.m. the security on duty found one starter lying outside the depot premises and further that a trap was laid for catching the person who had thrown outside the depot premises. He stated that the said starter was brought from Margao depot in a tempo under challan No. 05056. He produced the said challan at Exb. E-3. He stated that at about 1.10 hrs. in the early morning of 15-5-91 the Security on duty found the workman walking towards the starter, lifting the same and walking towards the bus stand when he was caught by the security staff on duty. He stated that on the next day that is on 15-5-91 when he reported for duty the security staff and the Shift Incharge reported the above incident to him. He stated that thereafter he verified the number on the starter with the number on challan Exb. E-3 and he found that the number was the same. He stated that the intention of the workman was to commit theft of the said starter. He stated that thereafter he made enquiry with the security staff and then issued suspension order and charge sheet to the workman. Shri Anil Prabhu is not an eye witness to the incident. He has admitted in his cross examination that he was not on duty on 14-5-91 at 9.00 p.m. He stated that the facts mentioned by him about the incident of 14-5-91 is based on the information received by him. He denied the suggestion that he did not verify the number on the starter with the number on

the challan Exb. E-3, and he also denied the suggestion that the starter was an old damaged starter. The statement of the Shri Anil Prabhu that he was informed about the incident by the Security staff on 15-5-91 is corroborated by Shri Nanda Naik the Security Assistant. In his deposition he stated that he reported about the incident to the Depot Manager Shri Anil Prabhu on 15-5-91 at 9.30 a.m.

11. The witnesses to the incident of 15-5-91 which had taken place in the early morning at about 1.10 hrs., are Shri Nanda Naik, the Security Assistant, Shri Babaji Sawant, the Security Officer and Shri Rohidas Desai, the Shift-In-Charge. The employer has not examined Shri Rohidas Naik before this Tribunal but has examined Shri Babaji Sawant and Shri Nanda Naik. It is the case of the employer that the workman was caught by Shri Nanda Naik while he was walking away with the starter towards the bus stand. According to the employer this starter was brought from Margao Depot in a tempo bearing No. 05056 under challan dated 14-5-91, and the security on duty had found the said starter at about 9 p.m. lying outside the depot premises. Shri Nanda Naik, the Security Assistant has stated in his deposition that on 14-5-91 he relieved Mr. Ramkrishna Gawas and Mr. Anand Kolambkar who were on duty from 4 p.m. to 12 midnight and that when he reported for duty at 12 midnight he was told by them that one starter which was in the tempo GDS 505 has been thrown out of the depot and that he should keep a watch to find out who comes to pick up the said starter. He has stated that at about 1 a.m. he saw the workman picking up the starter and proceeding towards out-gate. He has stated that thereafter he brought the workman to the ingate alongwith the starter and called the shift incharge Shri Rohidas Desai and the Security Officer Shri Babaji Sawant and told them that the workman was taking away with him the said starter. The workman in the cross examination of Shri Nanda Naik nor in his evidence did not deny that he had found the starter outside the depot, and that he had lifted the said starter and was carrying it in his hands when he came across the Security Asst. Shri Nanda Naik. The workman has tried to contend that the starter which was found by him outside the depot is not the same which was brought in tempo GDX 505 from Margao depot under challan dated 14-5-91, and that the starter found by him was an old damaged starter. This is evident from the suggestions put by him to the witness Shri Anil Prabhu. The workman has not produced any evidence to prove that the starter found by him was an old damaged starter. Shri Anil Prabhu, the Depot Manager has stated in his deposition that he verified the number on the starter with the number mentioned in the challan dated 14-5-91 produced at Exb. E-3 and found that the number on the starter and the number mentioned in the challan was the same. There is no reason to disbelieve the above statement of Shri Anil Prabhu. Besides the witness Shri Nanda Naik has also stated that he was told by Shri Ramkrishna Gawas and Anand Kolambkar that the starter which was brought in Tempo GDX -505 has been thrown out of the depot and he was asked to keep a

watch to find out who comes to pick up the same. He was not cross examined by the workman on his above statement nor it was denied that the starter which was found outside the depot by the workman was the one which was brought in tempo GDX -505. Besides, in the charge sheet itself the number of the self starter which was lifted by the workman found outside the depot was mentioned. The said number tallies with number of the self starter mentioned in the challan dated 14-5-91 Exb. E-3 and the said challan mentions the number of the tempo as GDX 505 in which the starter was sent. The reply dated 19-5-91 of the workman to the charge sheet has been produced at Exb. E-2. In this reply the workman did not dispute the number of the starter mentioned in the charge sheet nor stated that the starter was old and damaged. Therefore in my view the employer has succeeded in establishing that the starter which was lifted by the workman found outside the depot is the same which was brought from Margao Depot in Tempo GDX -505. Even otherwise, neither in the reply to the charge sheet nor in the evidence of the employer nor in his own evidence, the workman disputed that the said self starter was the property of the employer. It is not the case of the workman that the said self starter did not belong to the employer.

12. The workman in the evidence of the employer as well as in his evidence has admitted that in the early morning of 15-5-91 that is at about 1 a.m. or thereabout he had gone out of the depot. This fact is also admitted by the witnesses of the employer. In the cross examination of the employer's witness Shri Nanda Naik it was suggested to him that the workman had gone out of the depot to bring his scooter inside the depot. The workman in his deposition also stated that he had taken permission from the Security staff Mr. Babaji Sawant to go out of the depot premises to bring his scooter inside the depot which was parked in the open space. In his cross examination the employer has tried to bring on record that in the reply to the charge sheet the workman had stated that he had gone out of the depot for urinating and he never stated that he wanted to bring his scooter inside the depot. The workman admitted the above fact in his cross examination. However, according to me what is relevant is the evidence of the employer's witness itself. The employer's witness Shri Babaji Sawant has stated in his deposition that the workman came to him at about 1.15 a.m. and told him that he wanted to go out of the depot so as to bring his scooter near the gate of the depot. Besides, the statement of the workman dated 15-5-91 has been produced at Exb. W-5. The workman has stated that his said statement was recorded by Shri Rohidas Naik, who according to the employer's witness Shri Nanda Naik was the Shift-In-charge. There is no denial that the said statement of the workman was recorded by Shri Rohidas Naik on 15-5-91. The said statement was recorded on the very day of the incident. In the said statement the workman has stated that he had gone out at 1 a.m. to bring his scooter which was kept in the shed. The employer has not disputed this statement of the workman. The evidence on record supports the contention of the

workman that he had gone out of the depot on 15-5-91 at 1.00 a.m. to bring his scooter inside the depot which was kept by him out of the depot premises. Infact it is an admitted fact that the starter which the workman was carrying in his hands was lying outside the depot premises and the workman was found with the said starter outside the depot premises.

13. The allegation against the workman is that of committing theft of the starter. It is therefore to be seen whether this allegation of theft is proved against the workman. In the charge sheet it is alleged that after lifting the starter the workman walked towards the bus stand and the Security Assistant Shri Nanda Naik who was watching the incident followed him and caught him red handed while walking away from the depot and therefore it was clear that he was stealing the said starter. From the above allegation it is clear that the employer charged the workman with the offence of theft because he was found walking with the starter in his hands away from the depot and going towards the bus stand. It is therefore to be seen whether the employer has succeeded in proving the above facts. There is no evidence on record from the employer to show that the workman had thrown the starter out of the depot which was brought from Margao depot in tempo. Infact it is not the case of the employer that the workman had thrown the said starter out of the depot. The workman in his deposition has stated that he had gone out of the depot from the main gate to bring his scooter and that after coming out he went to urinate at the place shown as No. 1 in the sketch Exb. W-2 and that at the time of urinating he saw a starter on the ground at the place marked "c" in the sketch. This sketch is of the place of the incident and it is admitted by the employer's witness Shri Nanda Naik in his cross examination. The workman's statement dated 15-5-91 has been produced at Exb. W-5. This statement was recorded by the Shift in Charge Shri Rohidas Naik on the same day of the incident. In the said statement the workman has stated that he had gone out of the depot to bring his scooter and at the place where he had gone to urinate he found the starter. This statement of the workman is not disputed by the employer. There is no denial that his statement was not recorded by Shri Rohidas Naik. Therefore at the first opportunity available the workman had stated that he found the starter at the place where he had gone to urinate. He has identified the place as No. 1 where he had gone to urinate. It is the same place where the starter was lying on the ground. This is admitted by the employer's witness Shri Nanda Naik in his deposition. The workman in his deposition stated that after lifting the starter he came to the place marked by letter "A" in the sketch so as to proceed towards the security gate marked as "Gate Security" in the sketch. He stated that he came to the place marked as letter "A" because at the point letter "B" buses were parked. He stated that when he reached the place marked by letter "A" Mr. Nanda Naik enquired with him as to where he was going and that at that time he was facing the main gate and at the said gate the security staff Mr. Babaji Sawant was there. He stated that he told Mr. Nanda

Naik that he was going inside the depot with the self starter which he had found. In his cross examination the statement of the workman regarding identification of the places in the sketch was not disputed. What was disputed was his statement that he was facing the gate of the depot at the time when Mr. Nanda Naik called out at him. It was suggested to him that he was going towards the bus stand with the starter when Mr. Nanda Naik called out at him, which suggestion he denied. In my view in which position the workman was at the time when he was called out by Mr. Nanda Naik is very relevant. This would show the intention of the workman. If the workman was facing the depot gate as stated by him then it would mean that his intention was to bring the starter in the depot premises and if he was walking towards the bus stand it then would mean that he had the intention of committing theft of the starter. The employer's witness Mr. Nanda Naik who is the eye witness to the incident and as such a material witness stated in his deposition that he saw the workman picking the starter and proceeding towards the outgate and that thereafter he brought the workman to the in-gate alongwith the starter. However, he admitted in his cross examination that he had given his statement in the enquiry and that in that statement it may be that he had stated that when caught the workman he was facing the depot gate. The witness did not deny that he had made the above statement in the enquiry. It is therefore evident that the witness Mr. Nanda Naik in his statement recorded before this Tribunal wanted to implicate the workman by stating that the workman was walking with starter towards the bus stand. This statement of his is contradictory to the statement given by him in the enquiry. Mr. Nanda Naik in his cross examination also admitted that surrounding the place where the starter was lying about 8 to 10 buses were parked. He also admitted that when he asked the workman where he was taking the starter he told him that he was taking it to the depot. This statement of the workman itself lends support to his contention that he was facing the gate of the depot when he was called out by Mr. Nanda Naik because if he was found walking towards the bus stand he could have never said that he was taking the starter to the depot. This is because as per the sketch the bus stand is opposite premise. The employer's witness Mr. Babaji Sawant in his cross examination initially stated that he does not remember whether Mr. Rohidas Naik, the Shift-in-charge, enquired with the workman where he was taking the starter. However, when his report dated 15-5-91 Exb. W-3 was shown to him he admitted that in his report he had stated that Mr. Rohidas Naik had asked the workman as to where he was taking the starter, and he told him that he was taking the starter to the depot. The above evidence therefore clearly establishes that at the time when the workman was found with the starter by Mr. Nanda Naik, he was not proceeding with the said starter towards the bus stand but he was facing the main gate of the depot and he had stated that he was taking the said starter inside the depot. This evidence is contrary to the allegations made in the charge sheet, because in the charge sheet it is

alleged that the workman lifted the starter and started walking towards the bus stand. The employer has failed to prove the above allegations. The sketch Exb. W-2 which gives the description of the spot shows that to go towards the bus stand, it was not necessary for the workman to go to the place marked by letter "A". There were other ways from where he could have gone towards the bus stand. As for example, as per the said sketch the starter was lying at the place marked No. 1. Opposite to this place is the garden marked No. 4. On one side of this garden there is an internal road marked No. 7 and on the other side is an open space. As per the description of the spot the place marked No. 7 is the road going towards the bus stand, canteen, scooter shed. This road is by the side of the garden marked No. 4. The open space on the other side of this garden also leads towards the bus stand, canteen, scooter shed. If the workman wanted to go towards the bus stand he could have very well gone from this open space as it was nearer to the place where the starter was found lying on the ground and it was away from the main gate and as such the possibility of being noticed or caught by the security at the gate was very less. Also the statement of the workman in his deposition that the gardens shown in the sketch Exb. W-2 at point 4 and 5 has no fencing and that any person could pass through the said gardens is not challenged by the employer in his cross examination. The employer's witness Mr. Anil Prabhu stated in his deposition that the intention of the workman was to commit theft of the starter. However in his cross examination he stated his above statement is based on inference. The workman in his deposition stated that in the domestic enquiry the management had examined the shift in charge Mr. Rohidas Desai and in his statement he had stated the workman had no intention to commit the theft of starter. In the cross examination it was not denied that Mr. Rohidas Desai had made the above statement in the enquiry. Dishonest intention is the main ingredient in a case of theft. If the workman wanted to take starter towards the bus stand, his face would have faced the bus stand and not the main gate of the depot. Therefore the only reasonable inference can be drawn is that the workman's intention was to take the starter inside the depot. The evidence on record does not establish any dishonest intention of the workman in lifting the starter. In the light of what is discussed above I hold that the employer has failed to prove the charge of theft of self starter against the workman.

14. The other charge against the workman is of leaving the depot premises at 1.10 hrs. of 15-5-91 without permission from his superiors. The workman in his deposition stated that at about 1.00 a.m. he took permission from the Security Staff Mr. Babaji Sawant to go out of the depot premises from the main gate in order to bring his scooter which he had parked outside in the open space. In his cross examination he admitted that in his reply dated 19-5-91 Exb. E-2 he did not state that he had taken permission from Mr. Babaji Sawant, and also that he had stated that he had gone out of the depot premises to answer the nature's call. In my view what is

relevant is whether the workman had taken permission to go out of the depot premises, because admittedly the workman had gone out of the depot premises. Though in the reply to the charge sheet the workman stated that he had gone out to answer nature's call, his statement in the evidence that he had gone out to bring his scooter inside the depot premises is supported by employer's witness itself. The employer has examined Shri Babaji Sawant, the Security Officer. He stated in his deposition that on 15-5-91 at about 1.15 a.m. the workman came to him and told him that he wanted to go out of the depot to bring his scooter near the gate of the depot and that he gave him permission. Therefore it has come in the evidence of the employer itself that the workman had gone out of depot premises after taking permission from the Security Officer. The employer has tried to contend that the permission ought to be obtained from the shift-in-charge. However, nothing has been brought on record to prove that for going out to bring the scooter or to answer the nature's call permission from the Shift-in-charge was required. In the cross examination of the workman no suggestion was put to him that he did not take permission to go out of the depot or that he ought to have taken the permission from the Shift-Incharge. The employer also did not examine the Shift-Incharge Shri Rohidas Desai who was a material witness. In the light of what is discussed above, I hold that the employer has failed to prove the charge against the workman that he did not take permission to go out of the depot premises. In the circumstances, I hold that the employer has failed to prove the charges of misconduct levelled against the workman in the charge sheet dated 15-5-91 Exb. E-5. I, therefore answer the issue No. 2A in the negative.

15. Issue No. 3: The services of the workman were terminated by the employer with effect from 31-5-94 by order dated 31-5-94. The termination of service of the workman was by way of dismissal from service. The dismissal order has been produced at Exb. W-8. From the said dismissal order it can be seen that the workman was dismissed from service because the Inquiry Officer in his report had held that the charges of misconduct levelled against the workman in the charge sheet dated 15-5-91 were proved in the enquiry. In the present proceedings in my findings dated 20-3-98 I had held that the findings of the Inquiry Officer holding the workman guilty of the charges of misconduct are perverse and hence the enquiry was set aside. Thereafter, the employer led evidence before this Tribunal in support of the charges and in support of the action taken against the workman. While deciding the issue No. 2A, I have held that the employer has failed to prove the charges of misconduct levelled against the workman in the charge sheet dated 15-5-91. Since the order of dismissal of the workman was based on the proving of the charges of misconduct in the enquiry which was subsequently set aside by me and it has been held by me that the employer has failed to prove the charges of misconduct in the evidence led before this Tribunal, the order of dismissal becomes illegal and unjustified. The workman has also tried to challenge the order of dismissal on

the ground that it is not passed by the appointing authority. His contention is that he was appointed by the General Manager as per the appointment letter dated 16-1-86 produced by him at Exb. W-6 whereas his dismissal order is signed by Dy. General Manager that is the authority subordinate to the appointing authority and therefore the dismissal order is illegal. Since the order of dismissal is held to be illegal and unjustified because the charges of misconduct are not proved against the workman, I do not find it necessary to go into the issue whether the dismissal order is illegal and bad in law also because it is signed by the authority subordinate to the appointing authority as contended by the workman. In the circumstances, I hold that the workman has succeeded in proving that the action of the employer in terminating his services by way of dismissal from service w.e.f. 31-5-94 is illegal and unjustified and hence the order of dismissal dated 31-5-94 is set aside. I therefore answer the issue No. 3 in the affirmative.

16. Issue No. 4: This issue pertains to the relief to be granted to the workman. It has been held by me that the charges of misconduct levelled against the workman vide charge sheet dated 15-5-91 are not proved and consequently the order of dismissal/termination of service dated 31-5-94 passed against the workman is held to be illegal and unjustified. It is a settled law that once the termination of service is held to be illegal and unjustified the workman is liable to be reinstated in service with full back wages unless there are reasons which do not warrant reinstatement of full back wages. The Bombay High Court in the case of Sayyad Anwar v/s Visional Controller MSRTC, Aurangabad and others reported in 2000 (2) Bom. L.C. 388 in para. 3 of its judgment has held that it is now well settled that if an order of dismissal or termination or discharge or retrenchment is set aside as illegal, improper, and as an unfair labour practice, the normal relief of reinstatement with full back wages and continuity of service must follow unless the employer pleads and proves and brings on record cogent material to enable the Labour Court to depart from the aforesaid normal rule. In the present case the employer's witness Shri Anil Prabhu in his deposition stated that the performance of the workman was not good and that he was issued memos in this respect. However, no memos were produced by him in support of his above contention. He produced only one warning letter dated 15-4-91 Exb. E-2 issued to the workman. I have gone through the said warning letter. From the said letter one does not know what kind of memo was issued to the workman nor it can be known what was alleged against the workman in the memo dated 5-4-91. Further it is stated in the said warning letter that the explanation dated 12-4-91 given by the workman was found unsatisfactory. However one does not know what explanation was given by the workman to the said warning letter which was found to be unsatisfactory. Shri Anil Prabhu in his cross examination stated that he does not know with reference to which memo the said warning was given nor he remembers what explanation was given by the workman to the

memo dated 5-4-91. This being the case the warning letter Exb. E-2 cannot be used against the workman so as to deny him the relief of reinstatement and/or full back wages. The employer has not led the evidence to show that the workman was gainfully employed after his dismissal from service. Therefore as per the normal rule the workman is liable to be reinstated in service with full back wages and continuity of service. I do not find any reason to deviate from this normal rule in the present case. I, therefore hold that the workman is entitled to reinstatement in service with full back wages and other consequential benefits with continuity in service. I, therefore answer the issue No. 4 accordingly.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the action of the management of M/s. Kadamba Transport Corporation Ltd., Panaji-Goa, in dismissing the workman Shri Nagesh Gawas, Helper Mechanic, w.e.f. 31-5-1994 is illegal and unjustified. The workman Shri Gawas is ordered to be reinstated in service with full back wages and all other consequential benefits with continuity of service.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2003-LAB(Part)

The following Award passed by the II Industrial Tribunal of Goa, at South Goa, Margao on 30-8-2003 in reference No. IT/35/2001 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 31st October, 2003.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT MARGAO

(Before Smt. Anuja Prabhudesai, Additional District Judge, South Goa, Margao/appointed as Presiding Officer, II Industrial Tribunal, Goa)

Ref. No.IT/35/2001

Shri Rui A. E. Ferreira,
H.No.E-1, Near Panaji Church,
Panaji - Goa.

... Party No. I

V/s

The Goa Urban Co-op.
Bank Ltd., Panaji Branch,
Panaji - Goa.

... Party No. II

Party No. I - Represented by Advocate Mrs. A. Agni.

Party No. II - Represented by Advocate Shri G. K.
Sardessai.

Margao, dated: 30.08.2003.

A W A R D

By Order dated 31.05.2000, the Government of Goa referred the dispute for adjudication to this Tribunal.

2. Notices were issued to both the parties pursuant to which the Party No. I filed his statement of claim which is at Exh.3. The claim of party No. I is that he was appointed on 9.3.81 as the clerk of Goa Urban Co-operative Bank Ltd., Panaji, Goa. He was promoted w.e.f. 1.9.87 as a Junior Officer with basic pay scale which was erroneously fitted from Rs. 875/- to Rs. 955/- and other allowances. He continued to work in the said bank as its employee/workman until he received a letter No. HO/GN/37/ADM/157 dated 29.12.2000 from Party No.2 stating that he is ceased to be an employee of the said bank w.e.f. 23.9.2000.

3. The party No. I claimed that he is a workman, within the definition of Section 2(s) of the Industrial Disputes Act, 1947. Though he was a Junior Officer, the work assigned to him was basically that of a clerical nature which consisted of passing of cheques, checking and verification of accounts and carrying out such other work as was assigned to him by the Branch Manager. Party No. I claimed that he had no supervisory or managerial power, nor did he have any authority to sanction leave or to take disciplinary action against any employee of the said bank. At the relevant time his duties were mainly checking and verification of the cash credit accounts of the branch of the said bank. He had no independent right or authority to take any decision nor in any manner bind the said bank. The party No. I claimed that his duties were akin to that of checking/ glorified clerk.

4. Party No. I further claimed that he was on casual leave on 29.5.2000. 30.5.2000 was a holiday and he fell sick on 31.5.2000. Accordingly he applied for sick leave for a period of 30 days. In the meantime he was affected with falsifarum malaria and he extended his leave for another period of 30 days upto 29.7.2000. Party No. I further claim that on 7.6.2000 while he was still sick and his application for leave was pending, he received an order dated 29.5.2000 transferring his services to the Vasco-da-Gama branch of Party No. II and another order dated 31.5.2000 relieving him of his duties at Panjim branch, with instructions to report to Vasco branch from 1.6.2000. Party No. I had challenged the said transfer

order before the Registrar of Co-op. Societies, Panaji, Goa. However, the said Dispute Application No.8/2000 was rejected on the ground that it was not a dispute under Section 91 of Maharashtra Co-op. Societies Act, 1960. The said order was upheld by the Co-operative Tribunal and the Writ Petition was also dismissed by the Hon'ble High Court. Party No. I had filed a Letters Patent Appeal No. 18/2000 before the Hon'ble High Court and on 15.11.2000 when the Court was considering his prayer for Stay of his transfer order, Advocate Shri Ramani who was appearing for the bank made a statement before the Hon'ble High Court that the bank would consider a representation made by Party No. I against his transfer order and would also consider re-transferring him back to Panjim in the event the Party No. I complied with the transfer order. Accordingly, a representation was addressed to the bank on the very next date. The matter came up before the Hon'ble High Court on 20.12.2000 on which date Advocate Shri Ramani stated before the Hon'ble High Court that it would take some time to consider the representation since the General Manager had retired and the new manager required some more time to acquaint himself with the case and consider the representation. The Hon'ble High Court adjourned the matter to 8.1.2001 in lieu of the statement made by Advocate Shri R.G. Ramani. The party No. I claimed that on 8.1.2001, Advocate Shri Ramani produced a copy of order dated 29.12.2000 issued by the General Manager to the effect that Party No. I ceased to be an employee of the said bank.

5. The Party No. I claims that the said order is patently illegal. Party No. I claims that the transfer order was issued when he was on sick leave and that his application for sick leave was kept pending and was never decided by Party No. II. The party No. I has further stated that such an order also could not have been passed in view of the statement made by Advocate Shri Ramani before the Hon'ble High Court. The party No. I has claimed that the said order is totally malafide and that the General Manager had no authority to pass the impugned order dated 29.12.2000. Party No. I further stated that the rule referred in the said order is not at all applicable since eight days time mentioned in the said service rule would expire on 8.6.2000 despite which party No. I was treated as an employee till 20.12.2000. Besides party No. I had considerable sick leave to his credit and since his sick leave applications were duly supported by medical certificate there was no question of applying any service rules. Party no. I further claimed that the said rule has been applied with malicious motive of victimizing him and that there is total and gross violation of the principles of natural justice and fair play in addition to being an unfair labour practice. The said impugned order amount to retrenchment of service of party no. I without following the procedure or complying with the requirements of Section 25 F of the Industrial Disputes Act, 1947. The party no. I therefore claimed that he is entitled to be reinstated in service with full back wages and continuity in service. Party no. I further claims that he has not obtained any service/ employment elsewhere since the date of his termination.

6. The party no. II filed its statement of claim at Exh.5. The party no. II claimed that the reference is null and void since the party no. I is not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. Party no. II further claims that a reference proceeds on the assumption that the services of party no. I were terminated when in fact the party no. I had ceased to be in employment on account of his own act. Party no. II therefore challenged the jurisdiction of the tribunal entertaining the alleged dispute.

7. The party no. II claimed that party no. I was promoted as a Junior Officer w.e.f. 1.9.1987 and that there is separate pay scale for officers and that party no. I was fitted on the scale of Junior Officer and the total wages drawn by him at the time of the cessation of employment is Rs. 16,595/-. It is further contended that after the promotion as Junior Officer, the party no. I was posted in the Head Office and assigned to the internal Audit department vide transfer order dated 9.8.87. Thereafter by order dated 15.7.91, the party no. I was transferred to the Recovery department in the Head Office. He was transferred in the Head Office of the bank in July, 1992 and he was assigned to the section of dealing with follow up of recovery cases pertaining to salaried loanes vide transfer order dated 4.2.1994 and was placed as incharge of saving bank section. Vide order dated 20.10.98 he was posted as incharge of Cash Credit department, Panaji Branch and continued to work as incharge till he was transferred to Vasco Branch vide order dated 29.5.2000.

8. The party no. II claimed that party no. I was in service of the bank upto 22.9.2000 and thereafter ceased to be an employee of the bank w.e.f. 23.9.2000. It is further contended that party no. I exercised supervisory control over the subordinates, he distributed work among them and was responsible to ensure that they carried out their work in a proper manner. It is further contended that when party no. I was posted as a recovery officer he corresponded on behalf of the bank, instructed the lawyers engaged by the bank and represented the bank before the Court of the Registrar of Co-operative Societies. The party no. I operated independently within the area of operation assigned to him and took independent decisions that were capable of binding the bank as against the third party including the customers. It is further contended that as a Junior Officer, the party no. I has carried out several inspections of various banks during the period from 1.9.87 to July, 1991. The party no. II further contended that on transfer to the Vasco branch, the party no. I was required to perform managerial and supervisory functions.

9. The party no. II further stated that the service conditions provide for transfer of employees and in exercise of such powers conferred under the settlement arrived between the management and the representatives of the officers, on account of exigencies of the administration, the party no. I alongwith 33 others were transferred. The party no. I challenged the said transfer order and made several allegations of the nature

that were defamatory on the objective of stalling the said transfer order. Party no. II has further contended that allegations and statements attributed to Advocate Shri Ramani are devoid of substance. It is further contended that in view of the various requests for sick leave by party No. I, by letter dated 21.7.2000 party No. I was informed that the bank had taken decision to refer his case to Goa Medical College for proper investigation and diagnosis and had directed him to report to the Senior Physician in OPD on 25.7.2000 at 9.00 a.m. It is further stated that despite receiving the said letter, party No. I did not approach the board. It is further contended that there was a total of 168 days of sick leave to the credit of party No. I as on 30.6.2000 and the said leave exhausted on 22.9.2000. Party No. I did not report for duty at the transferred place even after his sick leave was exhausted and as such vide letter dated 29.12.2000 he was informed that he had ceased to be in service w.e.f. 23.9.2000. Party no. II has denied that the said order is illegal and erroneous or malafide or that it was intending to victimize the party no. I. Party no. II has denied that the violation of the said letter amounts to retrenchment and has stated that there is no violation of Section 25(F).

10. Based on the respective statements of claim, the following issues were framed;

ISSUES	FINDINGS
1. Whether the Party I proves that he is a "workman" within the meaning of Sec.2(s) of the I.D. Act, 1947?	Affirmative
2. Whether the Party I proves that the Party II terminated his services illegally and without justification from 23.9.2000?	Affirmative.
3. Whether the Party II proves that the reference is null and void and bad in law?	Negative.
4. Whether the Party II proves that there is no termination of service of the Party I by the Party II but he ceased to be in employment as per the service rules of the Party II?	Negative.
5. Whether the Party I is entitled to any relief?	As per the following award.
6. What Award?	

11. The Party No. I has examined himself and 5 other witnesses in support of his claim. Party No. II has examined its Manager in support of its claim.

12. Ld. Advocate Mrs. Agni has filed written arguments on behalf of the Party No. I and has also advanced oral arguments. Ld. Advocate Shri Sardesai

has filed written arguments on behalf of the Party No. II and he too has advanced oral arguments. I have perused the records and considered the arguments advanced by the respective Ld. Advocates.

13. Before advertng to the facts of the case, it is advantageous to refer to the definition of "workman" as well as to some of the decisions of the Apex Court as well as of the Bombay High Court on the subject.

14. The definition of "workman" as amended by Industrial Disputes Amendment Act, 46 of 1982 reads as under:-

2(s) "Workman" means any person (including an apprentice) employed in any industry to do any skilled or unskilled, manual, supervisory, technical, operational or clerical work for hire or reward, whether the terms of employment be express or implied, and for the purpose of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge, or retrenchment had led to that dispute, but does not include any such person -

(i) who is subject to the Air Force Act, 1950 or the Army Act, 1950, or the Navy Act, 1957 or

(ii) who is employed in the Police service or as an officer or other employee of a Prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercise, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature".

15. In the case of May and Baker (India Ltd.) vs. Their Workman reported in A.I.R. 1967 Supreme Court 678, the question was whether the medical representative who was discharged from service was a Workman under the Industrial Disputes Act. In the said case it was held that the main work of the employee was that of canvassing and the clerical or manual work which he had to do was incidental to the said main work of canvassing, and could not take more than a fraction of time for which he had to work. It was held that the employees duties were neither clerical nor manual. The fact that the employee Mukherji had no supervisory duties and that he had to work under the direction of his superiors would not mean that his duties were clerical or manual, he was held not to be a "workman" and therefore he was not a workman.

16. In the case of Burmah Shell Oil Storage and Distributing Co. of India Ltd. vs. The Burmah Shell Management Staff Association and others, reported in A.I.R. 1971 Supreme Court 922, the dispute among others, was whether the Sales Engineering Representative and the District Sales Representatives employed in the

Company were workman within the meaning of Industrial Disputes Act. The Apex Court held that a person cannot be assumed to be a workman on the ground that he does not come within the 4 exceptions in Section 2(s). It was held that the specification of the 4 types of work in the definition in Section 2(s) obviously is intended, to lay down that an employee is to become a workman only if he is employed to do the work of one of those types, while there may be employees, who not doing any such work, be out of the scope of the word "workman" without having to resort to those exceptions. It was further held that any practice, quite a large number of employees are employed in Industries to do the work of more than one of the kinds mentioned in the definition. In such case, it would be necessary to determine under which classification he will fall for the purpose of finding out whether he does or does not go out of the definition of "workman" under the exceptions. For this purpose, a workman must be held employed to do that work which is the main work he is required to do, even though he may be incidentally doing other type of work.

17. The constitutional Bench of the Apex Court in the case of H.R. Advanthaya etc. vs. Sandoz(I) Ltd. Etc. reported in 1995(1) LLJ 303, the Apex Court after reviewing its earlier decision reiterated that a person to be a workman under the Industrial Disputes Act must be employed to do the work of any of the categories, viz manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the 4 exceptions to the definition.

18. It is thus well settled that a person to be a workman must not only fall outside exclusionary clauses but must necessarily fall by the nature of his duties, in the first limb of the definition.

19. In the case of S. K. Maina vs. M/s. Carona Sahu reported in 1994 ILJ 1153 so also in the case of Sharad Kumar vs. Govt. of NCT of Delhi and others, reported in (222) 4 S.C.C. 490, the Apex Court has held that the question whether the employee is a "workman" within the meaning of the section is to be determined with reference to his principal duties and functions. The designation of an employee is not of much importance. The determinative factor is the main duties and not some work incidentally done.

20. In the case of Vinayak Baburao Shinde vs. S.R. Shinde and others reported in 1985(1) CLR 318, the divisional Bench of the Bombay High Court has held that the word supervise means to oversee, that is to look after the work done by other persons. The word 'supervision' occurring in Section 2(s) of the Industrial Dispute Act means supervision in relation to work or in relation to persons. The essence of supervision consists in overseeing by one person over the work of others. This also involves a power of the person overseeing to direct and control the work done by the person over whom he is supervising. While drawing the difference between the functions of manager and the supervisor,

the High Court held that the manager has power to give order, to lay down norms and to direct that the work shall be done in accordance with those norms, to take disciplinary action, to sanction or reject leave, whereas the supervisor has no powers to command others to do a particular work. His function is to see that the work is done in accordance with the norms laid down by the management, to assist the workman to do it correctly in accordance with the norms. He has no powers to sanction or reject leave but he can recommend leave.

21. In the case of Union Carbide vs. D. Samuel, reported in 1998(80) FLR 684, the Hon'ble Bombay High Court, has enumerated the tests laid down by the Apex Court and the Bombay High Court and other High Courts in determining whether the work done is supervisory or not. The Hon'ble Bombay High Court has enumerated the following tests laid down by the Apex Court:-

1. Designation is not material, what is important is the nature of work.
2. Find out the dominant purpose of employment and not any additional duties the employee may be performing.
3. Can he bind the Company/employer to some kind of decisions on behalf of the Company/employer.
4. Has the employer power to direct or oversee the work of his subordinates.
5. Has he power to sanction leave or recommend it; and
6. Has he the power to appoint, terminate or take disciplinary action against workmen.

The Hon'ble High Court has enumerated the following tests emanating from the judgments of Bombay High Court and the other High Courts:

- a. Whether the employee can examine the quality of work and whether such work is performed in satisfactory manner or not;
- b. Does the employee have powers of assigning duties and distribution of work;
- c. Can he indent material and distribute the same amongst the workmen;
- d. Even though he has no authority to grant leave does he have power to recommend leave;
- e. Are there persons working under him;
- f. Has he the power to suspense the work of men and not merely machines;
- g. Does he mark the attendance of other employees;
- h. Does he write the confidential reports of his subordinates.

It was held that these tests are not the only tests.

There can be a situation where there may be other tests to indicate whether the person is doing supervisory work or not. However, what is material is to note that a supervisor must be in a position to bind his employer in respect at the decisions that he has taken or in exercise of such power have control on them. It was held that a supervisor is one who could bind the company to take some kind of decision on behalf of the company. One who was reporting merely as to the affairs of the company and making assessment for the purpose of reporting is not a supervisor.

22. In the light of the above position of law emerging from statutory provision as well as judicial decisions, I shall now deal with the type of duties assigned to the employee i.e. Party No.I or discharged by him at the time of his termination and whether the principal work assigned to him was of clerical nature or of supervisory nature.

23. It is not in dispute that the Party No.I was appointed as a clerk. He was promoted as a Junior Officer in the year 1987. It is also not in dispute that at the time of termination of service the party no.I was posted in the Savings Department at Panaji Branch.

24. The party no.I has deposed that his duties as a Junior Officer were basically of clerical nature, such as passing of cheques, checking and verification of accounts and carrying out all duties as assigned by the Branch Manager. He has deposed that a Junior Officer was required to verify the cash credit account and all supervisory powers were exercised by the Branch Manager and Asst. Branch Manager. He has further deposed that if any irregularities were noticed whilst checking the account he had to report the same to the Asst. Branch Manager or the Branch Manager. He has deposed that whenever a cheque was presented for withdrawal of the money, as a Junior Officer he was required to verify whether the cheque number tallied with cheque folio number issued to the account holder. He had to verify the amount in words and figures. He had to check debit, posting in the ledger and initial the entry in the ledger as well as the instrument after verifying that the posting was in order. He has further stated that in case of any irregularity in honouring the cheque he had to report to the Branch Manager and take his instructions for clearance. He has further stated as far as passing of cheques, vouchers and other instruments, scroll clerks were required to enter the same in the scrolls and thereafter send the same to the Asst. Branch Manager. The scroll clerks were under the direct supervision of the Asst. Branch Manager. He has also stated that only the Branch Manager and the Asst. Branch Manager were authorised to sign the cheque return memo.

25. He has stated that as a Junior Officer he was required to check the balance. He has also stated that on opening bank account or checking of the balance, he had to seek instructions of the Branch Manager or Asst. Branch Manager. He has also stated that the certificate

of balance was signed by the Branch Manager.

26. He has stated that in the Savings department whenever customers wanted to deposit the cash a pay in slip was handed over to the cashier alongwith the cash by the customers. The said pay slip was thereafter sent to the scroll clerk of the Savings section. The pay slip used to go from the cashier to the scroll clerk and thereafter to the Asst. Branch Manager. The saving clerk had to make relevant entries in ledger of the respective saving account. Thereafter the ledger alongwith the paying slip was handed over to the Junior Officer for verification. After verification he had to initial, the entry in the ledger folio as well as the pay in slip.

27. He has further stated that whenever a customer approached the branch to withdraw the money from the savings account by withdrawal slip it was handed over to him by the clerk of the Savings department. The customer had to produce a pass book thereafter the clerk registered the details of the account, name of the party, date of obtaining withdrawal in the withdrawal slip register and thereafter the same was handed over to the customer for obtaining necessary acknowledgement in the register. He has stated that as a Junior Officer he had to verify the details of the withdrawal slip such as the date, amount in words and figures, the debit entry and the balance outstanding and confirm it with the saving passbook of the same account holder. He had to verify the signature of the account holder and compare it with the specimen signature card in possession of the bank. He has stated that after tallying the signature on the withdrawal slip and the specimen signature, he used to authorise payment.

28. Party No.1 has stated that whenever a customer wanted a cheque book he had to tender requisition slip in the form of letter of request which was necessary for issuance of fresh cheque book as well as for renewal of the said cheque book. He has denied the suggestion that such a requisition slip was handed over to him as a Junior Officer. He has stated that for the purpose of obtaining a duplicate passbook, the customer was required to give written application to the concerned counter clerk. He has denied that such applications were handed over to him as a Junior Officer by the concerned counter clerk.

29. It may be mentioned that in the cross examination, the Party No.1 had denied that one of his duties was to supervise the staff and peons assigned to Saving Department. He has denied having stated before the inquiry Officer that one of his duties was of supervision of staff and peons assigned to the saving department. He was confronted with the previous statement under letter A to A (Exh.21) recorded by the Inquiry officer Shri Rohit Lobo. Party No.1 had admitted that the said statement at Exh.21 was signed by him but when his attention was drawn to the portion of the statement under letter A to A, he had denied having stated that one of his duties was supervision of staff and peons assigned to saving section. He stated that he had

deposed that he was checking and verifying the work done by clerks. Similarly attention of the witness was also drawn to the portion of the statement marked under letter A to A in the statement dated 1.9.99 (Exh.22) recorded by the Inquiry officer Shri Rohit Lobo wherein he had stated that the savings bank counter clerk used to hand over the requisition slip for issuance of cheque book to the concerned Junior Officer to verify as to whether the signature on the said requisition slip tallied with the specimen signature. Attention of this witness was also drawn to the part of the statement under letter 'B' to 'B' (Exh.22) wherein he has stated that the concerned Junior Officer on verifying the signature of the application with that of the savings bank account holder on specimen signature card and on confirming that it tallied returned the said application to the savings bank counter clerk for issuance of the duplicate passbook. The party no.1 had denied having made such statements.

30. The said previous statements were not proved by examining the person who had recorded the statement or the person in whose presence such statement was made. Be that as it may, the duties performed by the employee cannot be held to be of supervisory nature solely on the basis of such statement made before the Inquiry Officer. The employee has spelt out his duties and it is for the tribunal to independently decide whether the duties performed by the employee were clerical or supervisory nature.

31. A.w.3 Avinash Raiturkar is a retired manager of the same bank. He has also stated that the duty of the Junior Officer is to check the work of the clerical staff. The Junior Officer is required to pass the cheque, issue receipt for money received. He has stated that the duties of the Junior Officer are assigned by the manager. Whenever cheques come for clearance from bank to bank the dealing clerk verifies whether there is sufficient balance in the account for clearing the amount. Thereafter the clerk debits the said cheque in the account of the concerned party and cheque is sent to passing officer who verifies the posting of the cheque as well as the specimen signature of the account holder, and if the signature tallies the amount is paid.

32. A.w.5 Shri Onafre Fernandes was the officer of the bank till his retirement and is presently one of the Directors of the bank. He has also deposed that the duties of the Junior Officer are merely to check the transaction relating to the debit and credit of the customers account.

33. Party no.1 was admittedly in the Head Office in the Recovery Department from July, 1991 to 4.2.94 and in the Audit department from September, 1987 to July, 1991. P.w.1 Shri Rui Ferreira has deposed that internal auditing was done under the supervision of Branch Manager or Asst. Branch Manager. If any defects were pointed out by auditors, the Branch Manager or Asst. Branch Manager was required to and was responsible to rectify

the defects. Documents of execution of loan were prepared by Branch Manager or Asst. Branch Manager. He has stated that when he was posted in the Head Office in the audit/branches and Head office recovery department, he was under the direct supervision of Chief Officer, internal audit/ branches and Chief Officer-recovery and counter supervision of General Manager-Secretary. He has deposed that duties were assigned by the Chief Officer and the duties were that of inspecting the branches, collecting data and relevant material and reporting to the Chief Officer as and when directed by the Chief Officer, preparing cases for filing arbitration proceedings for recovery of overdue loans. He has deposed that he used to prepare full set of documents which the party had executed with the bank for the purpose of availing loan, payment for release of advertisement for publication of summons was allowed by the Chief Officer and the final sanction for releasing payment was given by the General Manager. He has deposed that as per the instructions of the Chief Officer he used to take files to the Advocate of the bank and that he used to accompany the Chief Officer whenever he used to go to the Advocate with the case papers. As per the direction of the Chief Officer he used to collect the material upon inspection of the branches with regard to the internal audit and submit the material to the Chief Officer. The Chief Officer used to prepare the report, sign the audit report which were sent to respective branches.

34. In the cross examination he has admitted that he had represented the bank in the arbitration proceedings, as per the directions of the Chief Officer. He has deposed that the Chief Officer had given him a letter of authority and thereby authorised him to represent him before the Arbitrator Shri A.M. Deshpabhu in connection with loan recovery proceedings. He has admitted that he had appeared before the Registrar's nominee when he was posted in the recovery department. He has admitted that as per the instruction of the Chief Officer he had signed all the documents and correspondence addressed to the loanees whose loan was outstanding. He has stated that the Branch Manager used to report the cases of outstanding loan to the Chief Officer and the Chief Officer used to refer such cases to him for preparation of the case for filing the same before arbitration proceeding. He has admitted that as a part of his duty as internal audit department he was entrusted and had opportunity of conducting several surprise verification of cash and inspection of internal audit of various branches of the bank. He has stated that such surprise verification and inspection was done as per the direction of the Chief Officer. He has admitted that he was assigned duties of preparing internal audit. He has stated that he used to sign the report for having collected the data from the respective branches. He has admitted his signature on the audit reports dated 10.1.90, 2.2.90, 24.7.89, 23.9.89, 18.4.91, 22.1.90, 12.1.89, 13.4.88, 16.10.90 and 31.7.92 (Exh.D-3 colly). He has stated that the said reports were signed by him and the Chief Officer. He has deposed

that he had signed the report for having collected the data. He has deposed that he had to seek permission of the concerned Branch Manager before inspecting the said branch.

35. From the evidence of Party No.1, it is evident that during his posting in the Saving department his work was mainly of passing of cheques, he had to verify whether the signature on the applications or instrument tallied with that of specimen signature card of the savings bank account holder. He had also to verify the amount in words and figures. He had to verify the entry made by the concerned clerk in the ledger folio, check the balance/checking and verification of account, verify the entries on withdrawal slip. The evidence on record further indicates that during the time the Party No.1 was posted in recovery department, he had conducted inspection, collected data for preparing reports, signed audit reports, had represented the bank in arbitration proceedings, addressed letters to the outstanding loanees and prepared documentation for the purpose of filing arbitration proceedings against the loanees.

36. It may be mentioned that in the case of All India Reserve Bank Employees Association and anr. vs. RBI reported in A.I.R. 1966 Supreme Court 305, the Apex Court had held that in Ford Motors Co. of India Ltd. vs. Ford Motors Staff Union (1953-2 Lab L.J. 344) (LATI-Bom), the Labour Appellate Tribunal correctly pointed out that the question whether a particular workman is a supervisor within or without the definition of workman is "ultimately a question of fact, at best one of mixed fact and law..." and "will really depend upon the nature of the industry, the type of work in which he is engaged, the organisational set up of the particular unit of industry and like factor". The Apex Court also held that "as rightly pointed out by the Appellate Tribunal, the nature of the work in the banking industry is in many respects obviously different from the nature and type of work in a workshop department of an engineering or automobile concern". The Apex Court further held that the work in a bank involves layer upon layer of checkers and checking is hardly supervision but where there is a power of assigning duties and distribution of work there is supervision.

37. In the case of Lloyds Bank vs. Panna Lal Gupta reported in A.I.R. 1967 Supreme Court 428, it was held that the work that is done by the clerk in the audit department consists of checking of books of accounts and entries made in them and checking up is primarily a process of accounting and the use of the word checking cannot be permitted to introduce as supervisory nature. The work of checking the authority of the person passing the voucher or to enquire whether the limit of authority has been exceeded is also no doubt work of checking type but the checking is purely mechanical and it cannot be said to include any supervisory function. It was further held that the supervisor or officer who occupies the position of command or decision and should be authorised to act in certain matters within the limits of his authority without

the sanction of the manager or other supervisors. The Apex Court had referred to the case of Burmah Shell Oil Storage and Distribution Company, wherein it was held that an employee should occupy a position of command and direction and should be authorised to act without the sanction of the manager and other supervisors. The name and designation of the employee is not the determining test.

38. In the case of Arkal Govind Raj Rao vs. Ciba Geigy reported in A.I.R. 1985 Supreme Court 985, it was held that preparing bank reconciliation statements is one of the most mechanical type of clerical works. In this case the employee was a group leader and was required to see that the other persons at the group completed the work in time. He was required to take note of circulars and ask the other staff to take note of the same. It was held that merely because he was checking the work of other employees, it could not be said that he was working in a supervisory capacity. The nature of duties were held to be clerical and not supervisory.

39. In the case of T. Prem Sagar vs. M/s. Standard Vaccum Oil Company reported in A.I.R. 1965 Supreme Court 111, the petitioner was appointed as Road Engineer and was promoted as operational assistant, the Apex Court held that the salary drawn by the employee is not a relevant factor in deciding whether he is a workman or not. It was held that factors which are relevant are whether such employee has power to operate on the bank account, make payment to third parties and enter into agreements with them on behalf of the employer, whether he was entitled to represent the employer to the world at large in regard to the dealings of the employer with strangers, whether he had authority to supervise the work of the clerks employed in the establishment, whether he had control and charge of the correspondence, whether he could make commitments on behalf of the employer, whether he could grant leave, hold disciplinary proceedings, appoint staff members or punish them etc.

40. Reverting to the facts of the present case, Party No.I is admittedly an employee of the bank. As held by the Apex Court, work in the bank involves layer upon layer of checkers. This being the case the fact that Party No.I was required to check the debit entries, ledger folio, specimen signatures etc., cannot be the criteria for holding that he was having supervisory powers. At the most it can be said that he had checking powers but this checking powers are not synonymous with supervisory powers.

41. Having regard to the duties assigned to and discharged by the Party No.I, the question which arises is whether he occupied position of command and direction or had powers to take decision independently which would bind the bank and or whether the duties performed by him had element of supervisory character.

42. There is no dispute that the branch is headed by

a Branch Manager. It is the case of Party No.I that the supervisory powers are exercised either by the Branch Manager or by the Asst. Branch Manager. Party No.I has deposed that all the duties of all the staff members of the bank are assigned by the Branch Manager or the Asst. Branch Manager. He has deposed that he had no powers to sanction leave, to take disciplinary action against the staff and that he could not hire or recall any staff. He has stated that he could not transfer or terminate any of the staff members. He has stated that the Branch Manager could take disciplinary action against the employee and the Branch Manager had overall control over the employees. He has deposed that any decision which could bind the bank could only be taken by the manager. The salary bills of the staff members are signed by the Asst. Branch Manager and the Branch Manager. The clerks of the bank were reporting to the Asst. Branch Manager. The keys of the office or any cupboards, sales of the office were kept by the Branch Manager or the Asst. Branch Manager. The documentation and loan agreement were signed by the Branch Manager.

43. The evidence of A. w. 3 Shri Avinash also indicates that disciplinary action, hiring and recalling of staff is done by the Head Office. He has stated that the decision which bind the bank are taken at managerial level. The work to the staff is assigned by the Branch Manager. Salary bills of the staff are prepared by the Head Office and sent to the concerned branch for credit to the respective accounts of the staff. The concerned staff members are required to prepare the vouchers and the Branch Manager signs the said vouchers.

44. A.W.3 has stated that allotment chart is prepared every six months and the internal allotment of work is also done by the manager. He has deposed that the checking duties are allotted to the officer but the supervision is done by the Branch Manager. A.w.5 has also deposed that the bank is bound only by the decision taken by the General Manager and the Manager. He has deposed that the General Manager has overall control over the bank and the manager has overall control over the employees of that particular branch. He has deposed that the General Manager has power to transfer the employee of the bank. Casual Leave can be granted by the Branch Manager. Privilege leave can be recommended by the Branch Manager but has to be approved by the General Manager. He has stated that the keys of the office safe are retained by the manager and the other set is with the Asst. Branch Manager.

45. It may be mentioned that in the statement of claim Party No.II had stated that amongst other duties, Party No.I was also performing duties such as:- 1) allocation of clerks working under him and maintaining proper record thereof, (2) ensure proper attendance with reference to muster roll and (3) be responsible or safe custody of keys, bills, checking the books etc.

46. In para 6 of the affidavit, R.w.1 Shri Usgaonkar has

stated that the allotment of duties to the staff in the branch, the allotment of work every six months amongst the staff of the branch is done by the Branch Manager. He was specifically asked that once the manager assigns half yearly duties to the clerks which duties are assigned to the clerks by the Junior Officer, this witness stated that the Junior Officer assigns duties of distribution of work. He thereafter admitted the suggestion that distribution of work to the clerks is done by the Branch Manager. It is therefore evident that allocation of work was done by the Branch Manager and not by the Junior Officer/Party No. I.

47. R.w.1 Shri Usgaonkar has also admitted that every staff of the branch is required to report only to the Branch Manager. He has stated that the muster roll is kept in the cabin of the Branch Manager to sign the muster roll. He has further stated that the Branch Manager ensures punctual attendance of all staff members and also reviews the staff position. He has further stated that the Branch Manager confirms presentees and absentees at the end of the day. This statement also falsifies the claim of Party No.II that one of the duties of Party No.I was to ensure proper attendance.

48. R.w.1 Shri Usgaonkar has admitted in the cross examination that there are two sets of keys of the safe. In his cross examination he has admitted that as per RBI guidelines one set of the keys has to be kept with the Branch Manager and the other should be with the Asst. Branch Manager. His statement does not indicate that the Junior Officer is entrusted with any keys or that he is responsible for the keys as it has been averred in the statement of claim.

49. R.w.1 Shri Usgaonkar has also admitted that hiring of staff, recalling of the staff and taking disciplinary action against the staff is done by the Head Office. He has stated that as a matter of practice, the Junior Officer recommends the leave. He has stated that he is unable to give a single instance where the Junior Officer has recommended leave. There is nothing on record to indicate that the Junior Officer had at any time recommended leave of any of the employees or that he has powers to do so. He admitted that as per the form, the leave has to be sanctioned by the Branch Manager.

50. It may be mentioned that though the Party No.II had claimed that the saving department is headed by the Junior Officer, there is nothing on record to substantiate the said claim. R.w.1 has admitted that there is no such rule, but it is only by way of practice that the saving department is headed by the Junior Officer. R.w.1 claimed that the Junior Officer who is heading the saving department can grant leave, reshuffle the staff in the same department, can take disciplinary action against the staff who are working under him in the same department. He has admitted that the guidelines produced by him at Exh. 83 do not indicate that the Junior Officer can exercise such powers. He has also

stated that he cannot give a single instance whereby a Junior Officer had reshuffled the staff, taken any disciplinary action or recommended leave to any of the employees of saving department. He has admitted that the duty of scroll clerk is to write a scroll. He has admitted that the scroll clerk is directly under the Asst. Branch Manager. There is nothing on record to indicate that the Junior Officer could exercise any control or supervisory powers over any of the employees working in the saving department. On the contrary R.w.1 has admitted that the Branch Manager exercises supervisory powers and has control over all the employees including the Junior Officer of the branch. He had admitted that the Branch Manager controls and supervises the work of the employees of the concerned branch. He has also stated that all the duties exercised by Junior Officer are subject to supervision and control of the Asst. Branch Manager as well as the Branch Manager. He has admitted that every section and department of the branch is under the supervision and control of Asst. Branch Manager and the Branch Manager.

51. The evidence of R.W.1 clearly indicates that the supervisory powers were not exercised by the Junior Officer but are exercised by the Branch Manager. Unlike the facts in the case of Sadanand Samsee reported in 2003(1) CLR 50, there is no vertical division or subdivision of managerial, administrative or supervisory powers or functions. There is total assimilation of powers at managerial level. The percolation of powers is at the most till the level of Asst. Branch Manager and not below.

52. R.w.1 Shri Usgaonkar has deposed that the Junior Officer can take the decision of passing the cheque and signing the pay order. It is to be noted that Party No.1 has deposed that in case of any irregularity in honouring the cheque he had to report to the manager and take instructions from the manager for clearing the cheque. He has also deposed that if any irregularity was noticed whilst checking the account, he had to report to the manager. R.w.1 has also admitted in his cross examination that if any irregularity is noticed whilst passing the cheque or receiving any deposits/cash or while opening a bank account, the Junior Officer has to report the same to the Asst. Branch Manager or the Branch Manager.

53. It is thus evident that the Junior Officer can pass the cheque and perform other duties in a routine manner, in the normal course of business. However, in case of any irregularity in clearing such cheques, opening bank account or receiving deposits or cash he has no independent right or authority to take decision, but he had to report about the irregularity to the Asst. Branch Manager or the Branch Manager and seek their sanction or instructions. This fact clearly suggest that the Junior Officer had no powers to take any independent decision which could bind the bank.

54. Party No. II had produced the cheques at Exh. D.w.8 colly which bears the signature of Party No.I. There is no dispute that the Junior Officer had to sign the cheque as a token of passing the cheque. As stated earlier, the Junior Officer could pass cheques in a routine manner only when there were no irregularities and in case of any irregularity he had to take instructions from the Branch Manager. This being the case, signing of the said cheques is also not an indication of right to take independent decision. Be that as it may, some of these cheques also bear signature of the Asst. Branch Manager. All the cheques bear signature of the cashier, Junior Officer, Clerk and the Asst. Branch Manager. R.w.1 has also admitted that some of these cheques at Exh. D—8 bear his signature. The fact that some of these cheques are signed by the Branch Manager or the Asst. Branch Manager also indicates that the Junior Officer was not the final authority in completing such transaction pertaining to the said cheques.

55. R.w.1. has not denied the suggestion that drafting of letters and correspondence is the duty of the Branch Manager. He has admitted that trial balance is signed either by Branch Manager or the Asst. Branch Manager. He has admitted that checking of the day book and the ledger is done by Branch Manager or Asst. Branch Manager.

56. It may be mentioned that in the cross examination of Party No. I, Party No.II had produced letters dated 25.11.96 and letter dated 7.10.96 both at Exh. D-5 colly, addressed to M/s Thaly Constructions. By letter dated 25.11.96 the addressee was informed that the validity of cash credit limit expires on 31.12.96 and in case of intention to renew the said limit, addressee was directed to submit certain documents specified in the said letter. By letter dated 7.10.96 M/s Thaly Constructions was informed that its application for renewal of cash credit limit was considered favourably and he was required to send statement of stocks and also to get stock insured for an extended period. Party No.II has also produced another letter dated 24.4.96 which was addressed to the Manager by one Narayan Naik and Sunita Naik for renewing cash credit limit. The said letter is at Exh. D-11. It bears an endorsement of the concerned clerk. The said application was granted by the Manager and the same was initialled by Party No.1 for having checked the balance.

57. The said letters at Exh. D-5 colly were signed by the Party No.I for the Manager and not in his individual capacity. Similarly the letter at Exh.D-11 indicates that Party No.I had only checked the balance and the request for renewal was made to the concerned Branch Manager. R.W.1 has admitted that cash credit facility is sanctioned by the Head Office and can be recommended by the Branch Manager. He has admitted that renewal of cash credit can be recommended only by the Branch Manager. This being the case, these letters do not prove decision making process or authority.

58. It is also pertinent to note that some pay orders at Exh. D-7 colly were produced in the cross examination of A.w.1. The pay orders at Exh. D-7 colly are initialled by the Junior Officer and are also signed by the Branch Manager. R.w.1 has also stated that the pay order has to be signed by the Junior Officer and the Asst. Branch Manager or the Branch Manager. He has stated that the Junior Officer is required to sign the pay order only as a token of verifying the entry. He has admitted that in small branches where officer is posted as Branch Manager such verification is done by the clerk and the clerk is required to sign the pay order. It is therefore evident that the signature or initials on the pay order are only as a token of verification of the entry. The Junior Officer cannot on his own sign a pay order. Initialling the pay slips for having verified the entry is certainly not an indication of any independent decision taken by the Junior Officer.

59. A.w.1 Shri Rui Ferreira has also deposed that only the Branch Manager or the Asst. Branch Manager is authorised to sign the cheque return memo. This is also corroborated by Aw.3. He has deposed that the cheque return memos are signed by the Branch Manager and in his absence by the Asst. Branch Manager. A.W.5 has also deposed that the cheque return memo are signed by the Branch Manager. The statement of A.w.3 Shri Avinash Raiturkar and A.w.5 Shri Jose Onefre Fernandes regarding signing of the cheque return memos by the Branch Manager was not denied nor they were cross examined on this aspect. It may be mentioned that R.w.1 has stated that the Junior Officer can return the cheque on his own without consulting the Branch Manager. He has stated that the cheque return memo is required to be signed by the Junior Officer and the Asst. Branch Manager. He was unable to give a single instance where cheque return memo has been signed by the Junior Officer. He has also stated that he is unable to produce the cheque return memo which is signed by the Junior Officer. This witness further admitted that the cheques are not returned unless the cheque return register is signed by the Asst.Branch Manager or the Branch Manager as the case may be and is initialled by the Junior Officer. He has also admitted that the Branch Manager or the Asst. Branch Manager goes through the cheque return memo and verifies whether the reasons stated therein are correct. He has also admitted that as per the printed form, cheque return memo is required to be signed by the Branch Manager. All these factors also indicate that the Junior Officer has no powers to return the cheque without the instruction of the Branch Manager.

60. R. w. 1 Shri Usgaonkar has admitted that in case of any irregularity in opening the bank account, the Junior Officer has to report to the Asst. Branch Manager or the Branch Manager. He has admitted that the Junior Officer cannot bring any innovation in the working of the bank. He has admitted that all work like hiring staff, recalling staff, disciplinary action are done at the Head office. He has stated that certificate of balance is initialled by the Junior Officer and signed by the Branch

Manager. He has stated that certificate is not authenticated unless it is signed by the Branch Manager. He has stated that at the end of the day inspection and verification of the cheque and cash is done by the Asst. Branch Manager. He has stated that scroll register and cash book is checked and signed by the Asst. Branch Manager and Branch Manager everyday. He has admitted that scroll clerk is under direct supervision of the cashier and the Asst. Branch Manager. He has stated that in case of sundry creditors, Junior Officer has power to put the amount in sundry. He claims that the Junior Officer is the final authority in such transaction. At the same time he has admitted that in case of sundry creditor the Junior Officer has to consult the Branch Manager which fact again rules out the right to take independent decision and further falsifies the claim of R.w.1 that the Junior Officer is the final authority in such transaction. It was suggested to this witness that profit and loss account and the suspense account can be only debited with the sanction and approval of the Branch Manager at Branch level and by Chief Officer accounts at the Head Office level. R.w.1 neither denied this suggestion nor gave any other answer though this question was repeated several times. It may be mentioned the R.w.1 has deposed that documents pertaining to interest calculated, interest applied, are signed by the Junior Officer. He has denied that such registers are signed by the Branch Manager. He has stated that he is unable to produce any such register which is signed by the Junior Officer. It is pertinent to note that A.w.5 Shri Jose Onofre Fernandes had deposed that profit and loss debits pertaining to salaries are sanctioned by the Branch Manager and that Branch Manager and Asst. Branch Manager checks the documents regarding interest calculated, interest applied and documents to ensure about receipt of commission on document. A.w.5 was not at all cross examined on this aspect. In fact his statement has gone unchallenged. Under these circumstances, the statement of R.W. 1 that such documents are signed by the Junior Officer cannot be believed moreso when he was not able to produce such documents.

61. It is pertinent to note that A.w.5 had stated that there is no manual of duties of employees and that there are only guidelines issued by the Head Office. The Party No.II has placed on record these guidelines which are at Exh.83. As can be seen, these guidelines are in continuation of circular No. HO/CED/CIR/22/48 dated 10.10.85 and the guidelines which are at Exh.83 is a list of additional duties and responsibilities of officers at Head Office. The Party No.II has not produced circular dated 10.10.85. This circular does not indicate that the duties and responsibilities referred in this circular also apply to all other officers of the bank, on the contrary, it applies mainly to the officers at Head Office. This is relevant as at the relevant time the Party No.I was not working at the Head Office and as such it cannot be said that the circular/guidelines at Exh. 83 were applicable to the Party No. I.

62. These guidelines also refer to duties such as ensuring proper attendance and maintaining the muster roll, keeping safe custody of keys, security items etc., explaining salient features of scheme to the customers. It is in the evidence of R.w.1 that duties such as ensuring proper attendance and maintaining the muster roll, custody of keys, security items etc., are performed by the Branch Manager. There is also nothing on record to indicate that as a Junior Officer, Party No.1 was required to or that he used to explain to the customers the salient features of the scheme. As regards passing of vouchers, as per these guidelines, the officer is required to sign or initial the vouchers for having verified the correctness of all particulars. He is required to check that vouchers are entered in appropriate scroll, that they bear cashiers stamp with date and signature. These guidelines further indicate that before passing the vouchers the officer is required to obtain sanction by Br. Manager/Asst. Branch Manager on debit vouchers to sundry debtors and sundry creditors, obtaining prior sanction of Branch Manager on debit vouchers to establishment expenses, dead stock, furnitures and fixtures, stock of stationery, library books and all types of loans accounts.

63. These guidelines indicate that the duties and responsibilities of the officers in respect of staff include periodical reviewing of staff position, ensuring punctual attendance of staff members, allocation of duties and drawing charts of work distribution, confirming that the muster roll is signed by all the staff, checking the attendance, ensuring that the casual leave is sanctioned by the Head Office etc. As per the evidence on record, none of these duties were performed by Party No.1, on the contrary, the statement of R.w.1 indicates that the duties such as allotment of work, drawing chart of work distribution, ensuring punctual attendance and maintaining proper muster roll are the duties performed by the Branch Manager.

64. The guidelines at Exh. 83 further indicate the duties and responsibilities of the officers dealing with savings and home savings, safe account include obtaining and scrutinising of account opening forms including the specimen signature cards/slips and ensuring that they are complete in all respects, issuance of pass books, obtaining residential address and details etc., checking of opening of accounts in ledgers and registers, checking page totals and particulars and balances, ensuring proper filling up and delivery of passbook to customers, maintaining record of passbooks retained in the bank, receiving and ensuring that stop payment instructions are noted and carried out, pass cash, clearing and transfer cheques etc., withdrawal slips etc, checking and tallying the balance periodically, checking of ledgers and all entries therein, record in general index about transfer to and from inoperative accounts, record of cheques returned, ensure that cheques are returned with memo stating reasons, keep a record of loose cheques issued etc.

65. Similarly the duties and responsibilities of officers dealing with cash credit account include, calling for confirmation of balance in cash credit account for every quarter and ensure that drawals in excess of limits are not allowed, send advises if accounts are not operated commensurate with limits and submit such lists each month to Branch Manager, send advance renewal notices and follow up till limits are renewed or repaid, stop operations on account of unrenewed limits after expiry dates and report such accounts to Branch Manager, check drawing power register, ensure that statement of stock and other securities are received periodically, follow up where necessary and report in writing regularly to Branch Manager in case of defaults by borrowers, arrange regular verification/inspection of stock and other securities covering cash credit advances and place reports on file and report in writing to Branch Manager in case of delays/omission by inspecting, ensure prompt filling of decision etc., ensure correctness and submission of all records maintained and check registers etc.

66. The duties specified in the circular/guidelines at Exh. 83 are more of checking duties. These guidelines do not indicate that the officer could take any independent decision or that he had any supervisory control over the staff. For instance as per these guidelines, even though the officer has powers to pass independently cash, clearing and transfer cheques, instruments, invoices etc. he has to ensure that where necessary approval/sanction of Branch Manager or Asst. Branch Manager is obtained prior to passing vouchers. The letter and replies are to be approved by signing officer. The guidelines at Exh. 83 indicate that it is the duty or responsibility of the officer to allocate work to the clerks working under him in consultation with the Branch Manager and Asst. Branch Manager. As stated earlier, R.w.l has admitted that allotment of work is done by the Branch Manager. There is nothing on record to indicate that the Junior Officer had allotted any work on the contrary the evidence on record shows that the allotment of work is done by the Branch Manager. There is nothing on record to indicate that the Party No.I as a Junior Officer was performing all the duties mentioned in Exh.83. As stated earlier, some of the duties specified in Exh.83 are performed by the manager and some relate to the Head Office and for this reason it was necessary to specify as to which duties are performed by the Branch Manager, which are the duties performed by the Asst. Branch Manager and which duties were performed by the Senior officers and Asst. Officers and Junior Officer at Head office level and at Branch level. In absence of such material it cannot be said that all the Junior officers were required to perform the said duties or these duties mentioned in Exh.83 were performed by Party No.I or are applicable to Party No.I. Thus, the guidelines at Exh.83 do not in any manner prove that Party No.I was performing supervisory duties or that he was empowered to take any independent decision which could bind the bank.

67. In the case of Sunita B. Vatsaraj vs. Karnataka Bank reported in 1999(4) Bom. C.R. 209, a Head Clerk of the bank was posted as Branch Manager for a short period with delegated powers. Just in the present case in the said case also the petitioner was member of the Bank Employees Union and on being promoted she had resigned from the Union and joined Officers Union. The petitioner was working as incharge of saving section in the branch with one clerk or at the most with 2 clerks and as a part of her duty she was keeping an eye over their work while doing her own work. It was held that all throughout as officer or as incharge manager whether she was supervising the work of others and keeping watch on the clerks working under her, in her section or otherwise, her substantial work was nothing else but checking the works done by the clerks. It was held that being mechanical or clerical work it would neither be equated with the work of managerial or administrative nature nor it would be said that she was employed in a supervisory capacity. It was held that the incumbent was in managerial capacity nature of work done has to be seen. In the said case though the powers were delegated they were not exercised by the incumbent/petitioner. The petitioner though designated as an officer and entrusted with various powers, was in fact carrying out the work of clerical nature, including checking of the work of others in her section. It was held that the petitioner was a workman and that she was not working in the managerial capacity.

68. The facts as well as the principles laid down in the aforesaid decision squarely apply to the present case. As stated earlier, in the instant case also the Party No.I was promoted as a Junior Officer and had been drawing salary in the officers grade. On being promoted the Party No.I had also resigned from the Union and joined Officers Union. In the instant case also the petitioner was working in the saving section and was doing the work as assigned by the Branch Manager. He was checking all the books of accounts, cash deposits, passing cheques etc. He was not allotting work/duties. He had no authority to sanction leave of any employees, had no powers to take any disciplinary action. He was only checking the work done by the other clerks in the department. He had stated that there was no difference in service condition of the Junior Officer and the clerical staff. The duties performed by Party No.I are merely checking duties and cannot be equated with supervisory duties. Reference can also be made to the case of South Indian Bank vs. A.R. Chacko, reported in A.I.R. 1964 Supreme Court 1522, wherein accountant was held to be a workman. It was held that there is a difference between accountants who are really officers and those who are senior clerks with some supervisory duties.

69. It is also contended on behalf of Party no.II that Party No.I had inspected branches, prepared audit reports, where he had pinpointed shortfalls and detects and suggested remedial steps, had represented the bank in Arbitration proceedings, had addressed letters to

loanees whose loan was outstanding. It is argued that these duties are not merely clerical but are of essentially supervisory nature.

70. It may be mentioned that the inspection of branches, preparing audit report, representation of the bank etc. are the acts done during the period from 1.9.87 to July, 91 i.e. when Party No.I was working in the Head Office. At the time of the termination, Party No.I was working in the saving department and not in the Head office and since the said acts were not performed at the time of his termination, the same are not relevant for determining whether he is a workman or not. The evidence which would be relevant is the nature of duties performed by Party No.I during his tenure in saving department in Panaji branch.

71. Be that as it may, the evidence of A.w.1 Shri Rui Ferreira clearly indicates that when he was in the audit department as per the instructions of Chief Officer Recovery he had conducted surprise inspection of cash, inspection of internal audit of various branches and signed audit reports at Exh. D-3 colly for having collected data. R.w.1 has also admitted that surprise inspection are held by the Junior Officer as per the instruction of the Chief Officer at Head Office. He has also admitted that the Junior Officer cannot bring any innovation in the working of a bank. It was suggested to R.w.1 that the audit report is signed by the Chief Officer and the Junior Officer initials the same on having collected the material or data. This suggestion was not denied by this witness. He has given an evasive reply by stating that he is unable to state anything to the suggestion. The duty of the Junior Officer is restricted only to collecting data. The report has to be prepared and necessarily signed by the Chief Officer without which it has no binding effect. The Branch Manager is required to comply with the report and the compliance is to be reported to the Chief Officer.

72. In the case of National Engineering Industries Ltd. vs. Shri Kishan reported in A.I.R. 1988 Supreme Court 329, an employee working as an internal auditor was held not to be doing any supervisory work but only checking up on behalf of the employer and having no independent right or authority to take decision. It was held that a checker on behalf of the management or employer is not a supervisor. Referring to the judgments of Reserve Bank Employers Assoc., P. Maheshwari and other cases, it was held that supervisor was one who could bind the Company to take some kind of decision on behalf of the Company. One who was reporting merely as to the affairs of the employer. An employee making assessment for the purpose of reporting was not a supervisor. It was held that a supervisor means any person having authority, in the interest of the employee to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or be responsible to direct them or adjust to their grievances or effectively to recommend such action, if in connection with the exercise of such authority is not of a merely routine or

clerical nature, but requires the use of independent judgment.

73. As stated earlier, in the instant case, the duties performed by Party No.I were merely of collecting data. The report is signed by the Chief Officer and it is in the evidence that the defects pointed out in the report are to be rectified by the Branch Manager who is required to report compliance to the Chief Officer. Collecting data is neither an indication of exercise of any supervisory powers nor does it indicate use of Independent judgment or decision.

74. The Party No.II also placed on record orders at Exh.D-12 colly which are passed in arbitration cases wherein Party No. I had remained present as representative of the bank. Similarly, the document at Exh. D-15 indicates that Party No.I had represented the bank in auction proceeding dated 24.1.92. There is no dispute that Party No.I had represented the bank in Arbitration proceedings which were in connection with loan recovery proceeding. It is in the evidence of Party No.I that he was authorised by the Chief Officer recovery to represent him in the said proceeding. This statement is not disputed by Party No.II. In fact R.W.1 himself has admitted that Junior Officer cannot on his own represent the bank in any legal proceedings and that he can represent the bank only if he is directed by the General Secretary. He has admitted that Party No.I had acted as per the instructions of Chief Officer who in turn was directed by the General Secretary. Representing the bank as per the direction of the superior officer or preparing paper work/documentation to be given to the advocate for filing Arbitration cases cannot be equated with supervisory powers. Such duties are not performed independently. By performing such duties, the Party No.I has not taken any independent decision which could bind the bank.

75. It is also to be noted that the letters dated 1.11.99 at Exh.D-4, 30.10.91 at Exh.D-6 were not signed by Party No.1 as a Junior Officer, but the same were signed for the Chief Officer recovery. The bill of advertisement at Exh. D-16 was sanctioned by the General Manager/Secretary and it bears the endorsement of the clerk stating that it was checked and found to be correct. The said bill was initialled by Party No.I for having verified the same. These initials and the endorsement on the bill are also not suggestive of any supervisory powers. Similarly, a perusal of the report at Exh. D-17 indicates that in view of the instruction of the Chief Officer recovery, Party No.I had prepared the said report on the basis of the details available in the file. The said report also does not demonstrate exercise of any supervisory powers or administrative powers.

76. Now coming to the decisions relied upon by Party No.II, in the case of Apparao Basavannappa Manore vs. M/s. Wandleside National Conductors Ltd., reported in 1994(69) FLR 761, the petitioner was promoted as a

senior supervisory management staff cadre. He was carrying on duties of overall control over several sections and had achieved expertise in problem. In his confidential personal assessment report he was assessed regarding his supervisory ability to get things done. It was held that the petitioner was working in a supervisory capacity for an unbroken period of 12 years, and that the work entrusted to him could not be characterised as purely clerical work. It required inputs from the experience he gained in the supervisory capacity to analyse the data, identify material defects in the machines and suggest remedial steps. It was held that his duties could not be said to be of clerical nature merely because he was entrusted with the work of collecting and assessing data with regard to the frequent break down of the machines.

77. The Party No.I was neither working in a supervisory capacity nor was he ever assessed for his supervisory ability. He had no overall control over any section or the employees working in a particular section. Hence on the basis of the aforesaid decision, the Party no.I cannot be held to be a workman.

18. In the case of Trichy Srirangam Transport Company Ltd., reported in 1995 ILLJ 605, a checking inspector employed by a bus transport company was held not to be a workman. It was held that he had to check the work of conductors and drivers and had authority to issue warnings to conductors and drivers for minor offences. It was held that predominantly his work was to check the conductors and drivers.

79. In the case of M/s. Pabbojan Tea Co.Ltd., reported in 1977 Lab IC 721, a practicing lawyer who was appointed by Tea Company as Welfare Labour Officer and subsequently redesignated as Personnel Officer and Personnel Manager was held not to be a workman within the meaning of the section.

80. In the case of Suderambal vs. Govt. of Goa, Daman and Diu reported in A.I.R. 1988 Supreme Court 1700, it was held that a teacher employed in a school does not fall within the definition of expression "workman" though the school is an industry. It was held that imparting education which is the main function of teachers cannot be considered as skilled or unskilled manual work or supervisory work or technical work or clerical work. Imparting of education is in the nature of a mission or a noble vocation. A teacher educates children; he moulds their character, builds up their personality and makes them fit to become responsible citizens. Children grow under the care of teachers. The clerical work if any they may do is only incidental to their principal work of teaching.

81. In the case of Ramesh Wase vs. Commissioner, Revenue Division, Amravati reported in ILLJ 1996(55), the Hon'ble Bombay High Court had reiterated that the status of a person as an employee cannot be decided merely on the basis of his designation. The evidence led is for looking the range of duties performed by the

person. In the said case, the petitioner was a Sectional Engineer. He was required to record measurements of completed and running works in the measurement book. He was required to take Judgment as to whether work is completed as per technical specification or not. It was held that he supervises the work done by the workmen. There is an element of inspection by him and he had authority over the workmen and labourers by reason of his post. He had an authority to sit over and pass a judgment about the work. It was held that the nature of work gets the label of "supervision" because of the said authority and the said work could not be said to be technical job but the work was of supervisory nature.

82. In the case of Sadanand Ramesh Samsee reported in 2003(1) CLR 50, the petitioner was occupying the post of manager, he was performing responsible work of allotment of duties, supervision of contractors works, installation and erection of machines, recommending leave and dealing with outside parties directly with the help of 9 to 10 helpers or assistants. It was held that though his duties were within a limited sphere but merely because the sphere is limited it cannot be said that the petitioner was not performing the managerial duties. Within his own sphere his duties did partake the character of managerial functions of technical nature. It was held that the petitioner's duty had taken him out of the main definition of the workman and that he falls under the exception given in the definition. It was held that some duties performed by him fall within the managerial nature and some duties seems to be of supervisory nature.

83. Unlike the checking inspector, the Party No.I had no powers to issue warning to any of the employees. Party No.I was not inspecting the work done by the staff of saving department, but he was only checking the same. He had no authority to sit over and pass judgment about their work, as in the case of Ramesh Wase. He had no control over them. The duties of Party No.I also cannot be equated with the checking duties performed either by the checking inspector, or by the lawyer appointed as Personal Officer or by the Sectional Engineer. As stated earlier, checking duties in a banking industry do not denote supervisory control but are duties performed mechanically in a routine manner without exercising any supervisory control over other staff. Similarly, there can be no comparison between duties performed by an employee of the bank and duties of a teacher. This being the case the aforesaid decisions in the case of Trichy Srirangam Transport Company Ltd. vs. Pabbojan Tea Co.Ltd., Suderambal and Ramesh Wase or Sadanand Samsee are of no help.

84. In the case of United Commercial Bank and L.S. Seth reported in 2 ILLJ 1954 page 457, a Chief cashier of a branch of the bank was held not to be a workman. In the said case, there were 4 employees who were working under the Chief cashier, for whose acts of omission and commission he held himself responsible. It was held that the fact that he was provided with a separate table and chair in the banking hall, apart from

the cash enclosures where his subordinate work, points to his occupying as a cashier of that section rather than that of an employee sitting in the cash enclosure itself. The actual work of sending and receiving Bindki pay office cash, sending and receiving bullion to and from branches was done by the Asst.cashier, under supervision and control of the Chief cashier. The leave applications of the employees of the cash department were sanctioned by the Manager on recommendation of Chief cashier. In view of the nature of the duties performed by him, it was held that he was holding a post of supervisory nature and he possessed, what is described as "directional and controlling" power.

85. The Party No.1 was not provided with a separate cabin. He had no authority over any of the clerical staff. He had no powers to recommend their leave or report penalty or action. He was not responsible for acts and omission of any other employee. This being the case, the aforesaid decision is also not applicable.

86. The evidence adduced by both the parties clearly indicate that as a Junior Officer, the Party No.I was required to perform duties such as passing of cheques, checking and verification of accounts and carrying out all duties as assigned by the Branch Manager, verify the cash credit accounts. He had no authority to allot work, sanction or recommend leave, ensure attendance, issue memo/warning or report action or exercise control over any of the employees. He had no authority to command or take any independent decision which could bind the bank. He on his own could neither represent the bank nor could enter in any agreement on behalf of the bank. He could bring no innovation in the working of the bank. In the absence of aforesaid powers the duties performed by the Party No.I are in the realm of checking duties and these checking duties which are clerical duties cannot be equated with supervisory duties. The Party No.I is therefore held to be a workman within the meaning of Section 2(s) of the Act., Issue No.I is therefore answered in the affirmative.

87. It is not in disputes that Party No.I was on casual leave on 29.5.2000 and 30.5.2000 was a holiday. It is not in dispute that vide application dated 2.6.2000, Party No.I had applied for sick leave w.e.f. 31.5.2000, on the ground that he was suffering from viral hepatitis. A medical certificate dated 31.5.2000 issued by Dr. Oscar Rebello from GMC and duly countersigned by Medical Superintendent of GMC on 2.6.2000 was also forwarded alongwith application dated 2.6.2000. Party No.I has placed on record the copy of said application alongwith the medical certificate which is at Exh. 27 colly. Party No.I has stated that the said application was hand delivered to the Branch Manager, Panaji. The Branch Manager, Panaji had not communicated to him anything on 2.6.2000. On 7.6.2000 he received a letter dated 2.6.2000 whereby the Branch Manager had returned the leave application dated 2.6.2000, on the ground that Party No.I was already transferred to Vasco branch and that his leave application could not be considered by

Panaji branch. Party No.I has placed on record copy of the said letter dated 2.6.2000 at Exh. 28. Party No.I has further stated that on the same date i.e. on 7.6.2000 he received another letter dated 31.5.2000 whereby the Branch Manager had informed him that in terms of the transfer order No. HO/MC/37/CIR/31 dated 29.5.2000 he was relieved from duties w.e.f. 31.5.2000 and was required to report to Vasco from 1.6.2000. The transfer order dated 29.5.2000 was also forwarded alongwith letter dated 31.5.2000. Party No.I has placed on record copy of letter dated 31.5.2000 as well as the transfer order, the same are at Exh. 29 colly. The Party No.I has stated that the said transfer order was not served on him on any date prior to 7.6.2000.

88. It may be mentioned that R.w.1 had stated that the transfer order was served on the Party No.I on 31.5.2000. He has admitted that there is no endorsement on the said order to show that the same was served on the Party No.I on the same date. The Party No.I was admittedly on leave on 29.5.2000. 30.5.2000 was a holiday and had applied for sick leave w.e.f. 31.5.2000. There is nothing on record to indicate that he had been to the bank on 31.5.2000. There is absolutely no material on record to show that the order was served on 31.5.2000 or that the Party No.I was relieved on the same date. It is also to be noted that the contention of Party No.I that he had hand delivered the Leave application on 2.6.2000 is not disputed. The Party No.II could not have and also would not have accepted the said leave application on 2.6.2000, in the event the transfer order was already served on the Party No.I on 31.5.2000 and he was relieved of his duties on 31.5.2003 Panaji. The leave application was not returned or hand delivered to the Party No.I on the same date but it was returned vide letter dated 2.6.2000. Party No.I has stated that the said letter as well as the transfer order and the letter dated 31.5.2000 at Exh. 29 colly were received by him only on 7.6.2000. There is no specific denial of this statement. There is also no material on record to prove that the transfer order was served on Party No.I on 31.5.2000 or that it was received by the Party No.I prior to 7.6.2000. There is also nothing on record to show that Party No.I was relieved on 31.5.2000. This being the case, the contention of Party No.I that he had received the transfer order on 7.6.2000 cannot be disbelieved and this fact leads to the only inference that the transfer order was served on the Party No.I when he was on sick leave and was not relieved from his duties.

89. Party No.I has stated that on 8.6.2000 he returned the original leave application alongwith the medical certificate to the Branch Manager stating that he was not yet relieved from Panaji branch. He has placed on record the copy of the said letter dated 8.6.2000, the same is at Exh. 30. By letter dated 16.6.2000, the branch Manager informed the Party No.1 that he was relieved from duties w.e.f. 31.5.2000 and as such he was not in a position to entertain his sick leave application. The application for sick leave and the medical certificate was also returned to Party No.I. The copy of the letter

dated 16.6.2000 is at Exh. 31. Party No.I. has stated that the letter dated 16.6.2000 at Exh. 31 was received by him on 17.6.2000. By letter dated 19.6.2000, the Party No.I informed the General Manager that his application for sick leave and the medical certificate was returned by the branch Manager on the ground that he was transferred to Vasco branch. He had informed the General Manager that he had received the transfer order on 7.6.2000 whilst he was sick and his application for sick leave was pending before the Branch Manager and when he was not yet relieved from duties. He had forwarded all the correspondence to the General Manager and had requested him to sanction his sick Leave application w.e.f. 31.5.2000. He had also stated that he was unable to join at Vasco till he was declared medically fit. The Party No.I has stated that subsequently he was affected with falsifarum malaria and as such vide letter dated 4.7.2000 he requested the General Manager/Secretary to extend the sick leave for a further period of 30 days i.e. upto 29.7.2000. He had also forwarded the medical certificate issued by Dr. Oscar Rebello on 3.7.2000 and which was duly countersigned by the Medical Superintendent of GMC on 4.7.2000. Party No.I has placed on record copy of the said application alongwith medical certificate at Exh.33 colly. By application dated 2.8.2000, the Party No.I sent another application for extension of leave until declared medically fit. The said application and the medical certificate are placed on record at Exh. 34 colly.

90. Party No.I had deposed that on 2.8.2000 or thereabout he received a letter dated 21.7.2000 asking him to report to the medical board on 25.7.2000. The said letter is at Exh. 89. The Party No. I has stated that he had received the said letter after the stated date i.e. 25.7.2000. In the statement of claim it was alleged that the said letter was sent by registered post. The Party No. II has not produced the A.D. card nor any other material to prove that the said letter was received by the Party No.I prior to 25.7.2000. R.w.1 was also unable to state when the said Letter was posted or when it was received by the Party No.I. He has also not denied the statement that the said letter was received by the Party No.I. on 2.8.2000. It is thus evident that the letter dated 21.7.2000 was received by the Party No.I only after the stated date and as such he was unable to appear before the Medical Board.

91. The Party No. I has stated that no decision was taken by the General Manager or the Branch Manager on his leave applications. It is to be noted that the letter dated 21.7.2000 also does not indicate that the leave applications of the Party No.I were rejected. It is to be noted that R.w.1 has stated that none of the sick leave applications were accepted by the bank. He stated that decision on sick leave was communicated to the Party No.I. He has neither specified the date on which such decision was taken or communicated to Party No. I nor has he produced any such document to show that the sick leave applications were rejected and that the Party No.I was informed about the same. Thus there is nothing

on record to prove that the sick Leave applications were rejected.

92. It is not in dispute that Party No.I had also challenged his transfer order before the Registrar of Co-operative Society vide Dispute Application dated 20.7.2000 which was registered as Dispute Application No.8/2000/RCS at Exh.35. The said application was dismissed by the Registrar of Co-operative Society on the ground that it was not a dispute under Section 27 of Maharashtra Co-operative Societies Act. The said order is placed on record at Exh. 35. The said order was upheld by the Co-operative Tribunal by judgment dated 31.4.2000 which is at Exh. 36 and the Writ Petition filed against the said order was also dismissed by the High Court by order dated 5.10.2000 at Exh. 37. Party No.I had filed a Letters Patent Appeal No. 18/2000 challenging the order of the Single Judge. He had also filed an interim application for Stay of transfer order, the said application was registered as C.M.A. 280/2000. The Party No.I had stated that the said Writ Petition had come up for hearing on 15.11.2000 on the point of admission and Stay. It is stated that Ld. Advocate Shri R.G. Ramani who was representing the bank had made a statement before the Court that Party No.I should make a representation to reconsider his transfer by explaining his grievances. Party No.I has further stated that Advocate Shri Ramani had further stated that Party No.I had to join Vasco branch he would be brought back to Panaji within a short time. It is stated that in view of the said statement made by Ld. Advocate Shri Ramani, the application for interim orders was disposed of with orders "no orders on this application at this stage".

93. The Party No. I has stated that in view of the statement made by Ld. Advocate Shri Ramani, he had made a representation on the very next date i.e. 16.11.2000. By this representation, the Party No. I had put forth his grievances before the General Manager and had requested him to cancel his transfer order dated 29.5.2000 or to modify his transfer order to any of the five branches or Head office of the bank in or around Panaji. He had also informed the General Manager that in the event he still insisted that he should join at Vasco he would be able to join at Vasco branch subject to his illness. He had also informed the General Manager about the statement made by Ld. Advocate Shri Ramani before the Hon'ble High Court. Party No.I has placed on record the copy of the said representation which is at Exh. 39.

94. The Party No.I has stated that he did not receive any reply from the Bank/General Manager till the first week of December, 2000 and as such he instructed his Advocate to file another application for interim relief and accordingly a fresh application was filed on 8.12.2000. It was registered as C.M.A.No. 550/2000. The copy of the said application was also served on Advocate Shri Ramani. It was stated in the said application that the Advocate for the bank had made a statement before the High Court that if P.No.I makes a representation against his transfer, his party would consider the same

and accordingly he had submitted representation to the General Secretary and that he had not received any reply on the said representation. The said miscellaneous application had come up for hearing on 20.12.2000, on which date Advocate Shri Ramani had sought time on the ground that the General Manager Shri Nadkarni had retired on 30.11.2000 and the new General Manager required sometime to look into the representation. In view of the said statement, the matter was adjourned and was taken up on 8.1.2001 on which date Advocate Shri Ramani produced a termination order dated 29.12.2000 which was issued by the General Secretary Shri Nadkarni terminating the services of Party No.I w.e.f. 23.9.2000. Since the services of Party No.I were already terminated w.e.f. 23.9.2000, the Letters Patent Appeal as well as the Miscellaneous application were disposed of. Party No.I has placed on record the copy of judgment dated 8.1.2000 passed in Letters Patent Appeal and C.M.A. No.550/2000 which are at Exh. 40 colly. He has also placed on record the letter dated 29.12.2000 at Exh. 41 whereby Party No.I was informed that he was on sick leave upto 22.9.2000 and since he had remained absent beyond the period of leave he had ceased to be an employee of the bank w.e.f. 23.9.2000 as per the service condition in force.

95. The Party No.I has also examined A.w.2 Advocate Rivonkar who was representing the Registrar of Co-operative Societies in the Letters Patent Appeal No. 18/2000. He has also stated that on 15.11.2000 in the course of the arguments, the Advocate representing the bank had made a statement that in case the Party no.I makes a representation, the same would be considered by the bank. He has also stated that the Advocate for the Party No.I had stated that the said statement should be recorded, however it was observed by the Court that the statement was made by an Advocate and that the Advocate would convince his client.

96. A.w.6 Agnelo Diniz was representing the Party No.I in Letters Patent Appeal No. 18/2000. He has deposed that the matter had come up for hearing on 15.11.2000 and in the course of the arguments on interim application the lawyer representing the bank had made a solemn statement that if the Party No.I makes a representation, the same would be considered by the bank. He has stated that he had agreed to make such representation and had also asked the Court to record the statement made by the Advocate for the Party No.II and that the Court had observed that since the statement was made by an Advocate across the bar it was not necessary to record the same. He has deposed that on the very same date he drafted the representation and gave the same to the Party no.I for serving the same on the bank. The said representation was served on 16.11.2000 and since no reply was received till the 1st week of December, the Party No.I approached him to make an application before the High Court. Accordingly he drafted the application which specifically stated what had transpired in the Court on 15.11.2000. The copy of the application was also served on Advocate for

the bank. He has stated that the matter had come up for hearing on 20.12.2000 and that the Advocate for the bank had sought time on the ground that the previous General Manager had retired and the new General Manager required some more time to acquaint himself with the matter. He has stated that the matter came up before a different Bench on 8.1.2001, on which date the Advocate for the bank produced an order issued by the bank terminating the services of the Party No.I.

97. It may be mentioned that the Party No.II had denied that the Advocate representing it in the High Court had stated before the Court that if the representation was made the same would be considered. The Party No.II has not examined the Advocate who had allegedly made such statement. Ld. Advocate Shri Sardesai has relied upon the decision in the case of State of Maharashtra vs. Ramdas Nayak reported in A.I.R. 1982 Supreme Court 1249, a statement recorded in the Judgment was sought to be contradictory before the Apex Court. It was held that "if the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject". The principle is well settled that statement of fact as to what transpired at the hearing, recorded in the judgment of the Court are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence, If a party thinks that the happenings in the Court have been wrongly recorded in a judgment, it is incumbent upon the party while the matter is still fresh in the minds of the Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error.

98. In the instant case, the Party No.I has not sought to contradict any statement recorded in the judgment or the records of the Court. Party No.I has only tried to show as to what had transpired in the Court on 15.11.2000 and under what circumstances the representation at Exh.39 was made. This being the case, the evidence of A.w.2 and A.w.6 cannot be excluded on the basis of the decision in the case of State of Maharashtra.

99. The evidence of A.w.2 and A.w.6 clearly indicates that on 15.11.2000 the Advocate representing the bank had made a statement that in case the Party No.I made a representation to reconsider his transfer, by putting forth his grievances/ difficulties, the same would be considered by the bank. The statement of A.w.6 also indicates that he had made the representation in view of the statement made by the counsel for the bank. The copy of the representation (Exh.39) was served on the bank. The statement made by the Advocate for the bank and what had transpired in the Court on 15.11.2000 was also stated in the representation at Exh.39. The bank had neither disputed making of such statement by its Advocate nor had the bank rejected the representation. The statement made by the Advocate for the bank so also the circumstances under which the representation was made were stated in the application dated 8.12.2000.

at Exh.40 colly. The copy of the said application was served on the Advocate for the bank. Neither the bank nor the Advocate on record had denied the correctness of the facts stated in the application on the contrary, the evidence of A.w.6 indicates that the Advocate for the Party No.II had sought time on 20.12.2000 on the ground that the new General Manager required more time to acquaint himself with the matter. No decision was taken on the representation made by the Party No.I and on 8.1.2001, the Advocate for the bank had produced order dated 29.12.2000 stating that Party No.I had ceased to be an employee w.e.f. 23.9.2000. This evidence is relevant as the same not only proves that the bank had considered the Party No.I as its employee till 20.12.2000 but also proves the arbitrary exercise of power.

100. R.w.1 has deposed that the said order was in terms of Rule III D of Service condition at Exh.79. The said rule provides that an employee remaining absent on duty beyond the period of leave already sanctioned to him shall cease to be an employee of the bank unless he returns within 8 days after the expiry of such leave and furnishes good cause to the satisfaction of the manager of his inability to report for duty on the due date. An employee not reporting for duty within a period of eight days nor caring to act in such a manner as to show inclination for being an employee shall be treated as having left employment and shall be entitled to draw only such payments as are legally payable to him.

101. As stated earlier, the Party No.I was on casual leave on 29.5.2000 and 30.5.2000 was a holiday. The Party No.I had applied for sick leave w.e.f. 31.5.2000 R.w.1 has stated that the leave applications were rejected. It is the case eight days time stipulated in the aforesaid rule would expire on 8.6.2000 and in the absence of any explanation the Party No.I would cease to be an employee from 9.6.2000. by order dated 29.12.2000 Exh.41 services of the Party No. I are not terminated w.e.f. 9.6.2000 but this order states that the Party No.I has ceased to be an employee w.e.f. 23.9.2000.

102. The statement of R.w.1 indicates that the services of Party No.I were terminated w.e.f. 23.9.2000 as his sick leave was exhausted on 22.9.2000. It is to be noted that the Party No.I had stated that as on 30.6.99 he had 225 days of sick leave at his credit and further accumulated sick leave for the period ending 30.6.2000. He has stated that the period of 225 days if taken, sick leave could have expired as on 10.1.2001. Apart from the aforesaid sick leave, he had 240 days of privilege leave to his credit as on 30.6.99. He has stated that he had not availed of the said privilege leave. He has denied the suggestion that as on 30.6.99 he had 215 sick leave to his credit. He has admitted that he had applied for sick leave under Rule 5 of service condition at Exh.47. He had stated that he had not mentioned in the leave application whether he had applied for sick leave for half pay salary or full salary. He has denied the suggestion that he was not sick and that he had taken the ground of sickness for not reporting to Vasco branch.

103. It is pertinent to note that R.w.1 had stated that the Party No.I had 215 days of sick leave to his credit as on 30.6.99. He has admitted that chart of outstanding leave is prepared every year and a similar statement was prepared showing outstanding leave for the period ending on 30.6.2000. He has admitted that the said chart was not produced before the Court. He has denied the suggestion that the said chart was not produced as the same would have revealed that as on 30.6.2000 Party No.I had 225 days sick leave to his credit. It may be mentioned that the said chart was relevant as it would have shown whether Party No.I had 225 days sick leave or 215 days sick leave to his credit as on 30.6.2000. The Party No.II has not assigned any reasons for withholding this material document.

104. Be that as it may, R.w.1 has admitted that in the sick leave account of an employee the period of sick leave may be entered as twice the amount of leave taken only when the employee makes a request that he should be permitted to avail of sick leave on full salary. R.w.1 has stated that double sick leave cannot be allotted unless employee applies for such leave. R.w.1 has stated that the Party No. I was paid full salary for the period from May, 2000 to August, 2000 and proportionate salary till the exhaustion of his sick leave on 22.9.2000. He has stated that as per the rule when full salary is paid for the period of sick leave twice the amount of the leave availed is debited from the leave to the credit of the employer. He has produced letter dated 27.11.2000 at Exh.91, whereby the General Manager had requested the Chief Officer, Head Office, Panaji to pay full salary to the Party No. I from 1.9.2000 to 21.9.2000, towards sanction/adjustment of sick leave balance till 21.9.2000. He has also produced letter dated 30.12.2000 at Exh.92 whereby the Chief Officer was requested to credit half day salary to the S. B. Account of the Party No.I, being half day sick leave on 22.9.2000. The letter at Exh.91 indicates that the Party No. I had 43 days sick leave to his credit, with half pay. The chief officer was requested to pay salary from 1.9.2000 to 21.9.2000 towards sanction adjustment of sick leave balance 21 + 21 till 21.9.2000. The copy of letter at Exh.91 was not served on the Party No.I. R.w.1 has stated that he does not know whether the Party No.I had applied for sick leave with full pay. The sick leave applications are on record at Exhs: 27, 28, 30, 32 and 33. For the reasons best known, R.w.1 stated that he did not want to refer to the said applications for answering the question whether the Party No.I had applied for sick leave with full salary. It may be mentioned that none of these applications indicate that the Party No.I had applied for sick leave with full pay. R.w.1 has also admitted that the P.No.I was not informed that his sick leave was being doubled.

105. It is thus evident that even though the Party No.I had not applied for sick leave with full pay, twice the amount of the leave was debited from his sick leave account and this fact was not even informed to the Party No.I. As stated earlier, R.w.1 has admitted that double sick leave cannot be debited unless the employee specifically seeks permission to avail sick leave with full

salary. No explanation is forthcoming either from Party No.II or from R.w.1 as to on what basis double the amount of sick leave was debited from the sick leave account of the Party No.I, without Party No.I applying for sick leave with full salary. It is also to be noted that R.w.1 has admitted that if sick leave was not doubled, the Party No. I would have sick leave till 10.1.2001. R.w.1 has also admitted that in addition to sick leave, Party No.I also had privilege leave to his credit. If this be the position, the services of Party No.I could not have been terminated w.e.f. 23.9.2000, on the basis that sick leave had exhausted on 22.9.2000.

106. It is also to be noted that the Party No.II has not explained as to why the termination order was passed in the month of December when according to them the Party No.I had ceased to be an employee w.e.f. 21.9.2000. Rule III does not authorise termination of services with retrospective effect.

107. Be that as it may, in terms of Rule III D the employee would cease to be an employee in case he remained absent on duty beyond the period of eight days after the expiry of leave already sanctioned. This rule cannot be invoked if the employee furnishes good cause to the satisfaction of the manager of his inability to report for duty on the due date. An employee can be treated as having left employment when he neither reports within a period of eight days nor cares to act in such a manner as to show inclination for being an employee.

108. In the instant case, the Party No.I had admittedly submitted applications for sick leave which were accompanied by medical certificates and which were issued by the doctor from GMC and which were also countersigned by the Superintendent of GMC. In the statement of claim, Party No.II had not pleaded that Party No. I had absented on false ground of sickness. Thus the fact that Party No. I was suffering from sickness as stated in the medical certificate was not specifically disputed by Party No.II.

109. Be that as it may, Party No.I had also examined A.w.4 Dr. Oscar Rebello who was attached to GMC at the relevant time and who had issued certificates at Exh.27 and 33. This witness has stated that he had examined Party No.I and that Party No.I was suffering from viral hepatitis. He has admitted that he had issued the medical certificate on 31.5.2000 at Exh.33. He had identified his signature on the same. He has stated that the said certificate was issued by him after examining Party No.I. A.w.4 has also stated that he had again examined Party No.I and issued another certificate dated 2.7.2000 at Exh.33 as the Party No.I was suffering from malaria falsifarum. He has stated in the cross examination that on the date of issuing the certificates he was clinically satisfied that the patient was suffering from viral hepatitis. He has stated that said certificate can be given on the basis of clinical examination. He has stated that usually no drugs are prescribed for viral

hepatitis except vitamins and diet control. He has stated that the symptoms of viral hepatitis are usually anorexia i.e. lack of appetite, vomiting, severe fatigue, jaundice. He has stated that he does not remember whether any blood test was done to determine the type of virus. He has stated that absence of duties does not depend on type of virus. He has stated that falcifarum malaria can be preceded by fever, jaundice etc. He has stated that patient suffering from fever need not necessarily be admitted in the hospital and he can be an outpatient. He has stated that he does not recollect whether in the instant case, the patient was admitted or not. He has denied the suggestion that he had issued the certificates without examining the patient. A.w.4 Dr. Oscar Rebello has deposed that on the date of issuing the certificate at Exh. 27 he was clinically satisfied that the patient was suffering from viral hepatitis. He has stated that such certificate can be given on the basis of clinical examination and it is not necessary to wait for the report. No evidence has been adduced by Party No.II to disprove the aforesaid statement of A.w.4 or to prove that such certificates cannot be issued on the basis of clinical examination. In the absence of such evidence, the statement of A.w.4 and the certificate at Exh. 27 and Exh.33 cannot be disbelieved or discarded. Consequently it cannot be said that Party No.II was feigning sickness.

110. A.w.4 is a doctor attached to Government hospital. There is nothing on record to indicate that he is either related to Party No.I or that he is associated with him in any manner, so as to give a false certificate or a false statement before the Tribunal. Besides, the certificate issued by A.w.4 was also countersigned by the Superintendent of GMC. There is absolutely no material on record to doubt medical proficiency of A.w.4 or to disprove genuineness of certificates issued by him or truthfulness of his statement before this Tribunal.

111. It is also to be noted that by letter dated 21.7.2000 Exh.89, the Party No.II had directed the Party No.I to appear before the Medical Board. This letter also does not indicate that the Party No.II disputed either the genuineness of the certificates or the fact that the Party No.I was suffering from sickness as stated in the certificates. The said letter indicates that the Party No.I was directed to appear before the Medical Board for proper investigation, diagnosis and necessary medical treatment/assistance. Besides, as stated earlier, the said letter was received by the Party No.I after the dated stated in the letter and the Party No.II had not intimated to the Party No.I any other date on which he was required to appear before the medical board. Hence no adverse inference can be drawn for not reporting to the medical board on 25.7.2000.

112. The evidence of A.w.4 Dr. Oscar Rebello indicates that Party No.I was in fact sick and was not merely feigning sickness to avoid reporting to work. The Party No.I had proved his sickness for the said period. This being the case, there was no willful absence during the said period. In view of the aforesaid facts and circumstances the Judgment in the case of Vermon Lobo

vs. Himalaya Drug Co. in Writ Petition No. 286/97 is not applicable to the facts of the present case.

113. It is also not in dispute that no show cause notice was issued to the Party No. I. He was not called upon to report to duty. In the case of Uptron India Limited vs. Shammi Bhan and anr. reported in (1998) 6 Supreme Court Cases 538, the services of the employee were terminated on account of over stay of leave without permission by invoking the clause of automatic termination in certified standing orders. The Apex Court held that the respondent was a continued employer. The Apex Court held that the employee against whom action on the basis of such clause is proposed to be taken must be given an opportunity to hearing. Principles of natural justice, which have to be read in the offending clause, must be complied with and the employer must be informed of the grounds for which action was to be taken against him for overstaying the leave.

114. In the case of Lakshmi Precision Screws Limited vs. Ram Bahagat reported in (2002) 6 Supreme Court Cases 552, the workman had absented himself without any prior information. A letter was issued to him to report back on duty within 48 hours and tender his explanation for his absence. It was further stated in the letter that in the absence of such explanation he would be presumed to be no longer in service and his name would be struck off from the muster roll under the certified standing orders. Since the workman had not complied with the said letter no letter was issued informing him that his name had been removed from the muster roll for absenting himself for 10 consecutive days without leave. The Labour Court had held that the absence of the workman was caused by illness and was not intentional. The order was upheld by the High Court while dismissing the appeal. The Apex Court held that one ought to read the doctrine of natural justice on the standing orders. The Apex Court held that the action was purely and squarely arbitrary in nature. It was held that arbitrariness is an antithesis to rule of law, equity, fair play and justice -contract of employment there may be but it cannot be devoid of the basic principles of the concept of justice. Justice oriented approach as is the prescribed trend shall have to read as an in built requirement of the basics of concept of justice, to wit, the doctrine of natural justice, fairness, equality and rule of law".

115. In the case of D.K. Yadav vs. J.M.A. Industries reported in 1993 (3) Supreme Court Cases 259, the Apex Court after considering several decisions held that "the law must therefore be now taken to be well settled with the procedure prescribed for depriving a person of livelihood must meet the challenge of Article 14 and such rule would be liable to be tested on the anvil of Article 14 and the procedure prescribed by a statute or statutory rule or rules or orders effecting the civil rights or result in civil consequences would have to answer the requirement of Article 14. The procedure prescribed by law must be just, fair and reasonable and not arbitrary, fanciful or oppressive. There can be no distinction

between a quasi-judicial function and an administrative function for the purpose of principles of natural justice. The aim of both administrative inquiry as well as the quasi-judicial inquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable only to quasi-judicial inquiry and not to administrative inquiry. It must logically apply to both. Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the rights of a person affected would be in conformity with the principles of natural justice.

In the said case the service of the appellant was terminated by invoking the clause in certified standing orders on the ground that he had fully absented duty continuously for more than 8 days with leave or prior intimation or prior permission. The Apex Court had held that no opportunity was given to the appellant and no inquiry was held. The Apex Court held that the principles of natural justice must be read in such clause of standing order otherwise it would become, unjust, and unfair, violating Article 14. Action of the management was held to be violative to the principles of natural justice.

116. Reverting to the facts of the present case, as stated earlier, the Party No. I had admittedly submitted sick leave applications which were accompanied with medical certificates. The said leave applications and the medical certificates were not rejected. Party No. I was not asked to report to work and no notice was issued to him before invoking Rule III D and consequently there was total violation of principles of natural justice.

117. It may be mentioned here that Party No. II has relied upon the judgment in the case of Punjab and Sind Bank and others vs. Sakattar Singh reported in (2001) 1 Supreme Court Cases 214, the respondent had proceeded on sanctioned leave for 3 days but had remained absent unauthorisedly for continuous period of 190 days. Bank had issued three letters to him directing him to join duty and also notice for seeking explanation for unauthorised absence. The respondent/employee had not offered any explanation regarding his unauthorised absence from duty nor he had placed any material on record to show that he had reported to duty within 30 days of notice as required by clause 14 of 4 Bipartite settlement.

118. In the said case, the Apex Court held that termination of service under one of the clause for Bipartite settlement is not a punishment for misconduct but only to notice the realities of the situation and does not result in violation of principles of natural justice and that no domestic inquiry is necessary.

119. The facts of this case are entirely different as the said clause itself provided for giving notice to the employee calling upon him to report to duty within 30 days. In the said case, three letters were issued to the

respondent and he was directed to rejoin the duty despite which he had neither given explanation nor he had reported to duty in compliance of the notice. As stated earlier, the facts of the present case are entirely different, as in the instant case, there is no clause in the Bipartite settlement which requires the bank to call upon the employee to report to the duties. Besides, as stated earlier the bank had also not issued any letter to Party No.I asking him to report to duty nor had the bank sought any explanation from Party No.I regarding his absence. It may be mentioned here that in the subsequent decision in the case of Lakshmi Precision Screws (supra), the Apex Court had considered the case of Punjab and Sind Bank and had held that the factual context differs in material particulars and even the bipartite settlement involved therein was much accommodative in nature. In view of the aforesaid facts the decision in the case of Punjab and Sind Bank are not applicable to the facts of the present case.

120. The decision of the Apex Court in the case of MaanSingh vs. Union of India reported in (2003) 1 CLR 989 is also not applicable to the facts of the present case. As in the said case, the appellant who was a constable in Delhi Police had remained authorisedly absent for over two years, his service was terminated after departmental inquiry. His challenge to termination order was rejected by the tribunal as also by the High Court. The Apex Court whilst dismissing the appeal held that the case fully falls within the ratio of the decision in the case of State of M.P. vs. Harihar Gopal reported in 1969 SLR 274, it was held that the delinquent officer in failing to report for duty and remaining absent without obtaining leave had acted in a manner irresponsibly and unjustifiedly. On the finding of the Inquiry officer, the charge was proved that he had remained absent without obtaining leave in advance. The order granting leave was made after the order terminating the employment and it was made only for the purpose of maintaining a correct record of the duration of service and adjustment of leave due to delinquent officer and for regularising his absence from duty.

121. In the instant case, neither there was habitual, unauthorised or unjustifiable absence without applying for leave nor there was termination order. The Party No.I has also not claimed that the termination order was invalidated merely because his absence was treated as sick leave or that he was paid salary during this period.

122. It is argued that transfer is incidence of service and that the employee has no legal right to be posted at one place and that he cannot refuse to comply with transfer orders and the employee who refuses to comply with transfer orders is liable for disciplinary action. Reliance is placed on the decision of the Calcutta High Court, in the case of Shankar Chakravorty reported in FCA (2001) 88 so also in the decision of Patna High Court in the case of K. Ramchandran reported in 2001(88) FLR 55. It is further contended that Party No.I had tried to stall the transfer order on false pretext of sickness and

this conduct is sufficient to justify the order dated 29.12.2000. It is further contended that the tribunal cannot reinstate the employee merely because no inquiry was held and that the tribunal can look into the evidence and decide whether the order was justified. Reliance is placed on the case of Tyre Stone and Rubber Company reported in 1973(26) FLR 359 and the case of Shankar Chakravarti vs. Britannia Biscuit Co. reported in 1978 ILJ 194.

123. In the case of Fire Stone Tyre and Rubber Co. vs. Management and others reported in 1973(26) FLR 359, the Apex Court has held that if there has been no inquiry held by the employer or if inquiry is held, to be defective it is open to the employer to adduce evidence for the first time before the tribunal justifying the order of discharge or dismissal.

124. In the case of Shankar Chakravorty, the Apex Court held that the rights which the employer has in law to adduce additional evidence in a proceeding before the Labour Court or Industrial Tribunal either under Section 10 or Section 33 of the Act questioning the legality of the order terminating the services must be availed of by the employer by making a proper request at the time it files its statement of claim or written statement or makes an application seeking either permission to take certain action or seeking approval of the action taken by it. It was held that if such a request is made in the statement of claim, application or written statement, the Labour Court or the Industrial Tribunal must give such an opportunity. If the request is made before the proceedings are concluded the Labour Court or the Industrial Tribunal should ordinarily grant the opportunity to adduce evidence but if no such request is made at any stage of the proceedings, there is no duty in law on the Labour Court or Industrial Tribunal to give such an opportunity and if there is no such obligatory duty in law failure to give any such opportunity cannot and would not vitiate the proceedings.

125. In the instant case, the Party No.II had admittedly neither conducted any inquiry nor had it issued any notice to the Party No.I before issuing order dated 22.9.2000. The Party No.II had also not made any request either in the statement of claim or by any application, to give it an opportunity to adduce any evidence for justifying the action. The Party No.II has now tried to justify its action on the ground that Party No.I had tried to stall the transfer order on the false pretext of sickness and that he had challenged the said transfer order before the Registrar of Co-operative Societies.

126. There is no dispute that transfer is incidence of service and that the employee has no right to seek transfer at any particular place. It is equally true that the employee can make representation against such transfer order by putting forth his grievances or difficulties and that he can also challenge such order on the ground of malafide, bias, victimization etc. This being the case, the fact that the Party No.I had made a

representation or that he had challenged the transfer order is by itself not sufficient to hold that he had misconducted himself. The question which is material is whether the employee had tried to stall transfer order without any justification or on the false pretext of sickness. As stated earlier, the Party No.I had filed applications for sick leave which were accompanied by medical certificates. The material on record also indicates that the transfer order was served on Party No.I when he had already applied for sick leave. The first application was not refused by the Branch Manager but it was returned on the ground that since the Party No.I was already transferred to Vasco branch such application could not be filed before Panaji branch. In view of this, the Party No.I had made applications which were addressed to the General Secretary and the same were accompanied with medical certificates. The General Secretary had not rejected any of these applications. The Party No.I has examined the Doctor to prove the certificates so also his sickness. Hence it cannot be said that Party No.I was feigning sickness or that he was trying to stall transfer order on the grab of sickness. This being the case the said order dated 22.9.2000 cannot be justified even on the basis of the material on record.

127. To sum up, the material on record clearly indicates that Party No. I was sick and had applied for sick leave w.e.f. 31.5.2000. No decision was taken on these applications and the transfer order was served on Party No.I during the pendency of these applications. The services of Party No.I were terminated w.e.f. 23.9.2000 on the basis that he had exhausted his sick leave as on 22.9.2000. The Party No.I had not requested for sick leave with full salary despite which the Party No.II had debited double sick leave from the sick leave account of Party No.I. This fact was not brought to the notice of Party No.I. The Party No.I was neither asked to report to duty nor he was given any notice before issuing the order dated 29.12.2000. On the contrary he was asked to make a representation and without considering his representation the termination order was produced before the Court stating that he had ceased to be an employee w.e.f. 23.9.2000, when in fact he was treated as a workman till 20.12.2000. The copy of the said order was not even served on Party No.I on or before 8.1.2001 but was only produced before the High Court in Letters Patent Appeal No.18/2000. All the aforesaid facts are sufficient to prove that the order was arbitrary and illegal and in total breach of principles of natural justice, equity and fair play. Issue No.2 is therefore answered in the affirmative.

128. It is also argued that the order dated 22.12.2000 is not a termination order passed by the management. It is contended that Party No.I had ceased to be in employment as a result of clause of settlement and not as a result of an overt act on the part of the employer. It is argued that the reference has proceeded on the basis that the services of the Party No.I were terminated. It is contended that the reference is null and void on account of non application of mind on the part of the Government. Reliance is placed on the case of

Buckingham & Carnatic Co. vs. Venkatayya reported in 1963 (II) LLJ 638. The facts of this case were that the employee had remained absent for about 52 days after the expiry of sanctioned leave, without even sending a communication for extending his leave. Thereafter he had sent a letter alongwith medical certificate stating that he was sick. This certificate was not accepted by the management on the ground that their Senior Medical Officer was not in a position to confirm that the employee was ailing for two months. Standing order provided for automatic termination of the service of a workmen remaining absent without leave for more than 8 consecutive days. It was further provided that if the employee gave an explanation to the satisfaction of the management, the absence shall be converted into leave without pay or dearness allowance. Such absence was also made a misconduct under standing order. The management had not accepted the explanation and had refused to reinstate him. The employee has applied for Employees State Insurance Authorities for getting sickness benefit and the same certificates were accepted as alternative evidence of sickness and sickness benefits were granted for the period of absence. Industrial Dispute as regards non-employment of the employee was referred for adjudication. The Labour Court directed reinstatement of the employee on the ground that his discharge was bit by provision of Section 73 of Employees State Insurance Act. Writ Petition filed by the company to quash the award was allowed but in the writ appeal preferred by the Union, it was allowed on the ground that the certificate was vague and hence the company had failed to discharge the duty cast on it under the relevant standing order to examine the certificate and evidence produced by the worker for the period of his absence on its merits.

129. The Apex Court held that in the absence of allegation and proof of malafide on the part of the Company, it could not be held that the Company had not discharged its obligation under standing orders of properly considering the explanation of the concerned worker for his absence. While interpreting the scope and effect of provisions contained in Section 73 of the Employees State Insurance Act, the Apex Court held that under common law an inference that an employer has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances inference to that effect can be legitimately drawn and it can be assured that the employee intended to abandon service. But where parties agree upon terms and condition of service and they are included in certified standing order, the doctrine of common law or consideration of equity would not be relevant. It is then the matter of construing the terms itself. It was held that when in held that when in accordance with the first part of the standing order an employee remaining absent for eight consecutive days without leave shall be deemed to have terminated his contract of service and thus relinquished or abandoned his employment. It was held that it was not necessary for the management to hold a disciplinary proceedings

merely because such absence is also made misconduct under the other standing order.

130. First and foremost, it is to be noted that this judgment was in the backdrop of interpretation of Section 73 of Employees State Insurance Act and as such it is not applicable to the facts of the present case. Even otherwise as stated earlier, the Party No.I had neither remained absent without any justification nor he had committed any act from which an inference of wilful absence or relinquishment of employment could be drawn and as such it cannot be said that Party No.I had ceased to be an employee of the bank, in terms of Clause III (d) of the Settlement dated 6.5.97(Exh.79 colly). The Party No.II had terminated the services of the Party No.I even though the aforesaid clause was not attracted and under such circumstances it cannot be said that the services of the Party No.I were not terminated on account of positive act of the Party No.II or that Party No.I had ceased to be an employee by his own act. It is also to be noted that the Party No.II has also sought to justify the order dated 29.12.2000 on the ground that the Party No.I had refused to comply with transfer order on the false pretext of sickness. Termination of services on such ground would not be covered under Clause III(d) at Exh.79 and the same would amount to retrenchment.

131. Be that as it may, it is well settled that termination of service of a workman for any reason whatsoever would constitute retrenchment except in cases excepted in the section. Reliance is placed on the case of Mohan Lal vs. Management Bharat Electronics Ltd., reported in A.I.R. 1981 Supreme Court 1257, Upton Indian Ltd. vs. Shammi Bhan reported in 1998(6) Supreme Court Cases 538. In the instant case termination of service of the Party No.I does not fall within any of the excluded categories and as such, termination would constitute retrenchment and failure to comply with provisions of Section 25 F renders the order of termination invalid and inoperative.

132. For the aforesaid reasons, neither the reference can be said to be null and void nor can it be said that there was no termination of service of the Party No.I. Hence issue Nos. 3 and 4 are answered in the negative.

133. It is a settled law that when the termination is held to be illegal and unjustified the normal relief of reinstatement with full back wages and continuity of service must follow unless the employer pleads and proves and brings on record cogent material to compel the Court/Tribunal to depart from this normal rule. In the instant case, the Party No.II has contended that lack of confidence in the employee is sufficient reason for not ordering reinstatement. Reliance is placed on the case of Binny Ltd. vs. Workmen reported in A.I.R. 1973 Supreme Court 1403. In this case the employee had availed leave on false representation. It was held that the employee had acted in a manner by which the management could possibly have no confidence in him

for the future and reinstatement could not be ordered.

134. Reference is made to several evasive answers given by the Party No.I and it is contended that these evasive replies given raises a question whether the Party No.I was the right employee for the job while in employment and whether he can be entrusted with public money. It is contended that the Party No.II has lost confidence in Party No.I and as such, the Party No.I is not entitled for any relief.

135. It is true that the Party No. I has given some evasive answers and has also pleaded ignorance of some facts. So was the case of R.w.1 Shri Usgaonkar, as this witness has not only given evasive replies but has given contradictory replies and has also feigned ignorance of several facts, which being the manager of the bank, ought to have been within his knowledge. Can it be said that the Party No.II has lost confidence in R.w.1 because of such evasive replies. If the principles laid down in the case of Binny Ltd. are not applicable to R.W.1 Shri Usgaonkar, what can be the reason for applying the same to the Party No.I? Victimisation, is the only answer.

136. Be that as it may, an employer cannot terminate services or refuse reinstatement on a vague and spacious plea that he has lost confidence in the employee. The employer has to prove that the employee has either acted dishonestly, insincerely or that he has either failed to behave upto the conduct expected of him or that he had acted in a manner which implies an adverse facet in his character. Terminating services or refusing reinstatement, in absence of such material will not only amount to arbitrary exercise of power but will also amount to victimisation and unfair labour practice.

137. In the instant case R.w.1 has produced chargesheet and findings/report at Exh. 82 colly of Enquiry officer Shri Rohit Lobo wherein the Enquiry Officer has held the Party No.I guilty of having committed fraudulent and dishonest acts in relation to the affairs and assets of the bank, for having acted in a manner which the manager considers is prejudicial and highly detrimental to the interest of the banking institution. It may be mentioned here that the Party No.II has not claimed that it has lost confidence in Party No.I in view of the report or findings given by the Enquiry officer Shri Rohit Lobo

138. Be that as it may, the statement of R.w.1 indicates that copy of the said report was not furnished to the Party No.I. In the case of Managing Director ECIL vs. B. Karunakar reported in A.I.R. 1994 Supreme Court 1074, the Apex Court has held that the right to represent against the findings is part of reasonable opportunity given to the employee and in violation thereof would amount denial of reasonable opportunity which would further result in violation of principles of natural justice. The Apex Court has held that delinquent employee will be entitled to a copy of the report even if the statutory

rules do not permit furnishing of the report and/or are silent on the subject. The ratio laid down in the case of Union of India vs. Mohammed Ramzan Khan reported in 1991(1) Supreme Court Cases 588 was confirmed. The Apex Court had held that requirement of giving an Inquiry Officer's report is also applicable in case of bank employees. From the statement of R.w.1 it is evident that Party No.II has acted on the said report and has imposed penalty on Party No.I without furnishing copy of the report to Party No.I and without even informing him that the money has been recovered from the arrears payable to him. This being the case no aspersions can be cast on the integrity and efficiency of the Party No.I on the basis of the report which was prepared and submitted after the reference and the copy of which was not furnished to the Party No.I. There is no material on record to cast doubt on integrity, efficiency and sincerity of the Party No.I. Under the circumstances, the Party No.II has no reason to apprehend or rather misapprehend that the Party No.I is not capable of performing his duties or that he is not a fit person for the job.

139. Party No.II has also relied upon the decision in the case of Indiana Engineering Works Pvt. Ltd. vs. The Presiding Officer reported in 1995 II CLR 890. In this case, the order of awarding backwages was set aside on the ground that even though the employee was gainfully employed he had denied on oath the fact of his employment. It was held that the dismissed workman also owes a duty to the Industrial adjudicator to honestly disclose full particulars of the facts which are purely within his knowledge and any attempt to mislead the Tribunal must surely be looked at askance.

140. In the instant case, the Party No.I is neither gainfully employed nor has he misled the Tribunal or withheld any material facts from the tribunal. Hence the decision in the case at Indiana Engineering Works (supra) is not applicable to the facts of the present case.

141. No other grounds are made out to depart from the normal rule of awarding reinstatement with full back wages and continuity in service. This being the case, the Party No.I is entitled for reinstatement in service with full back wages and all other consequential benefits and continuity in service. Issue No.5 is answered accordingly.

Under the circumstances and in view of discussion supra, I pass the following:

ORDER

The order dated 29.12.2000 whereby the services of Party No.I Shri Rui Ferreira were terminated w.e.f. 23.9.2000 is held to be illegal, arbitrary and unjustified. The workman Rui Ferreira is ordered to be reinstated with full back wages and all other consequential benefits and with continuity in service.

No order as to costs. Inform the Government accordingly.

Sd/-
(Anuja Prabhudessai),
Presiding Officer,
Industrial Tribunal.